Volume 3

STATUTES OF CALIFORNIA

AND DIGESTS OF MEASURES

2004

Constitution of 1879 as Amended

Measures Submitted to Vote of Electors,
Primary Election, March 2, 2004
and General Election, November 2, 2004

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

2003–04 Regular Session
2003–04 Third Extraordinary Session
2003–04 Fourth Extraordinary Session
2003–04 Fifth Extraordinary Session

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CHAPTER 209

An act relating to ballot measures and declaring the urgency thereof, to take effect immediately.

[Approved by Governor July 31, 2004. Filed with Secretary of State July 31, 2004.]

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

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

(a) The proponents of Proposition 65, which is on the November 2, 2004, statewide general election ballot, filed arguments in support of the measure in compliance with Section 9041 of the Elections Code. No opposing arguments were filed to Proposition 65 in a timely manner.

(b) The Legislature placed an alternative measure on the November 2, 2004, ballot, Senate Constitutional Amendment 4, which concerns the same subject matter as Proposition 65, namely reform of the local government and state government fiscal relationship. Senate Constitutional Amendment 4 was passed by the Legislature after the time had expired for filing ballot arguments for the November 2, 2004, election.

(c) Because the Legislature did not pass Senate Constitutional Amendment 4 until Proposition 65 had qualified for the November 2, 2004, ballot, and after the time had passed for filing ballot arguments, the proponents of Proposition 65 were unable to inform the public of their decision to support Senate Constitutional Amendment 4 instead of Proposition 65.

(f) Under these unique circumstances, the Legislature finds that it is in the public interest to permit the proponents of Proposition 65 to withdraw their arguments in support of Proposition 65 and inform voters of their support for Senate Constitutional Amendment 4.

(e) If the proponents of Proposition 65 choose not to withdraw their arguments in support of the measure, the Legislature finds that it is in the public interest to require the Secretary of State to inform the public about the lack of opposition arguments and to permit the filing of such arguments if done in a manner that does not disrupt the November 2, 2004, election proceedings.

SEC. 2. Notwithstanding the requirements of Sections 9040, 9043, 9044, 9061, and 9082 of the Elections Code or any other provision of law, the Secretary of State shall submit Senate Constitutional Amendment 4, adopted by the Legislature at the 2003–04 Regular Session, to the voters at the November 2, 2004, statewide general election.

SEC. 3. Notwithstanding Sections 13115 and 13117 of the Elections Code or any other provision of law, Senate Constitutional Amendment 4, adopted by the Legislature at the 2003–04 Regular Session, shall be placed first on the ballot, and shall be designated as Proposition 1A.

SEC. 4. The Secretary of State shall include, in the ballot pamphlets mailed pursuant to Section 9094 of the Elections Code, the information specified in Section 9084 of the Elections Code regarding Senate Constitutional Amendment 4, adopted by the Legislature at the 2003–04 Regular Session.

If that inclusion is not possible, the Secretary of State shall publish a supplemental ballot pamphlet regarding this act to be mailed with the ballot pamphlet. If the supplemental ballot pamphlet cannot be mailed with the ballot pamphlet, the supplemental ballot pamphlet shall be mailed separately.

SEC. 5. Notwithstanding Section 13282 of the Elections Code, the public shall be permitted to examine the condensed statement of the ballot title for at least eight days. Any voter may seek a writ of mandate for the purpose of requiring any statement of the ballot title, or portion thereof, to be amended or deleted only within that period.

SEC. 6. Notwithstanding any other provision of law, including Sections 9050 and 9051 of the Elections Code or any other provision of law, all state ballot pamphlets of the November 2, 2004, general election shall contain the following title and summary for Senate Constitutional Amendment 4, adopted by the Legislature at the 2003–04 Regular Session:

''Protection of Local Government Revenues''

''Protects local funding for public safety, health, libraries, parks, and other locally delivered services. Prohibits the State from reducing local governments' property tax proceeds. Allows the provisions to be suspended only if the Governor declares a fiscal necessity and two-thirds of the Legislature approve the suspension. Suspended funds must be repaid within three years. Also requires local sales tax revenues to remain with local government and be spent for local purposes. Requires the State to fund legislative mandates on local governments or suspend their operation.''

This shall be the only language included in the title and summary for Senate Constitutional Amendment 4, adopted by the Legislature at the 2003–04 Regular Session, and the Attorney General shall not supplement, subtract from, or revise that language.

Notwithstanding any other provision of law, including Sections 9050, 9051, 13247, and 13281 of the Elections Code, the ballot label for the November 2, 2004, statewide general election for Senate Constitutional Amendment 4, adopted by the Legislature at the 2003–04 Regular Session, shall be:

''Protection of Local Government Revenues''

''Ensures local property tax and sales tax revenues remain with local government thereby safeguarding funding for public safety, health, libraries, parks, and other local services. Provisions can only be suspended if the Governor declares a fiscal necessity and two-thirds of the Legislature concur.''

This shall be the only language included in the ballot label for Senate Constitutional Amendment 4, adopted by the Legislature at the 2003–04 Regular Session, for the condensed statement of the ballot title. The Attorney General shall not supplement, subtract from, or revise that language, except that the Attorney General may include the financial impact summary prepared pursuant to Section 9087 of the Elections Code and Section 88003 of the Government Code. The ballot label is the condensed statement of the ballot title and the financial impact summary.

Where the voting in the election is done by means of voting machines used pursuant to law in a manner that carries out the intent of this section, the use of the voting machines and the expression of the voters' choice by means thereof are in compliance with this section.

SEC. 7. Notwithstanding the requirements of Sections 9041 and 9042 of the Elections Code or any other provision of law, both the argument for adoption and the argument against adoption of Senate Constitutional Amendment 4, and the rebuttals to both of these arguments may make reference to and discuss any other measure on the November 2, 2004, statewide general election ballot the subject of which is local funding of public services.

SEC. 8. (a) Notwithstanding any other provision of law, if a measure placed on the November 2, 2004, statewide general election ballot does not have an opposing argument submitted by the deadline set forth by the Secretary of State for inclusion in the principal ballot pamphlet, the original text of that measure, along with the original Title and Summary prepared by the Attorney General and all fiscal summaries prepared by the Legislative Analyst, as well as the original text of the argument and any other material relating to that measure that is currently on public display pursuant to Section 9092 of the Elections Code and Section 88006 of the Government Code, shall be placed in a

supplemental ballot pamphlet instead of the principal ballot pamphlet, published by the Secretary of State pursuant to Section 4 of this measure. The proponents of that ballot measure may withdraw their supporting argument, no later than 5:00 p.m. on the second day following the date that this act is chaptered, and the Secretary of State shall be available for receipt of the argument on that day. No substitution supporting argument shall be made. The proponents of that ballot measure may then submit an opposing argument if it informs the voters that Senate Constitutional Amendment 4 has been adopted by the Legislature at a later date than that ballot measure and should be supported rather than that ballot measure. No rebuttal arguments shall thereafter be submitted. Notwithstanding any provision of law, the opposition argument submitted by the proponents of the measure may refer not only to the measure and why it should be opposed but also to Senate Constitutional Amendment 4 and why it should be supported. If the proponents of that ballot measure do not withdraw their supporting argument, then the Secretary of State shall, by general press release, solicit opposing arguments and among any submitted, shall select one in the manner specified in Section 9067 of the Elections Code. The selected opposing argument shall be included in the principal ballot pamphlet or the supplemental ballot pamphlet, along with the other materials specified in this section. An argument submitted pursuant to this section shall be submitted to the Secretary of State no later than 5:00 p.m. on the fourth day following the date that this act is chaptered, and the Secretary of State shall be available for receipt of the arguments on that day.

(b) If the proponents of that ballot measure do not withdraw their supporting argument, then the Secretary of State shall also include in the supplemental ballot pamphlet, any rebuttal arguments submitted pursuant to Section 9069 of the Elections Code pursuant to the deadline for the supplemental ballot pamphlet established by the Secretary of State, regarding a measure with respect to which no opposing argument was submitted by the deadline set forth by the Secretary of State for inclusion in the principal ballot pamphlet.

(c) Notwithstanding any other provision of law, pursuant to subdivision (e) of Section 9084 and Section 9093 of the Elections Code and subdivision (e) of Section 88001 and Section 88007 of the Government Code, the Secretary of State may include information in the principal ballot pamphlet regarding the location of materials that are included in a supplemental ballot pamphlet instead of the principal ballot pamphlet.

(d) This section shall not take effect if this measure is chaptered later than August 7, 2004.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To ensure that Senate Constitutional Amendment 4, adopted by the Legislature at the 2003–04 Regular Session, is submitted to the voters at the November 2, 2004, statewide general election, and to ensure that voters are given the opportunity to submit arguments for or against any measure on the November 2, 2004, statewide general election ballot for which an argument for or against it has not previously been submitted, it is necessary that this act take immediate effect.

CHAPTER 210

An act to add Section 14558 to the Government Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 5, 2004. Filed with Secretary of State August 5, 2004.]

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

SECTION 1. Section 14558 is added to the Government Code, to read:

14558. (a) The Legislature finds and declares that the Governor has issued a proclamation pursuant to paragraph (1) of subdivision (d) of Section 1 of Article XIX B of the California Constitution declaring that the transfer of revenues from the General Fund to the Transportation Investment Fund during the 2004–05 fiscal year pursuant to subdivision (a) of Section 1 of Article XIX B would have a significant negative fiscal impact on the range of functions of government funded by the General Fund of the state.

(b) Pursuant to paragraph (2) of subdivision (d) of Section 1 of Article XIX B, the transfer of revenues from the General Fund to the Transportation Investment Fund that would otherwise be required under subdivision (a) of Section 1 of Article XIX B is hereby suspended for the 2004–05 fiscal year.

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

In order to suspend the transfer of funds from the General Fund to the Transportation Investment Fund for the 2004–05 fiscal year pursuant to

Section 1 of Article XIX B of the California Constitution as quickly as possible, it is necessary that this act take effect immediately.

CHAPTER 211

An act to amend Section 41204.1 of the Education Code, to amend Sections 6585, 6588, 6590, 6591, 6592, and 25350.55 of, and to add Sections 6588.5, 6599.3, and 17617 to, the Government Code, to amend Sections 18115, 33020, 33333.2, 33333.6, 33672, and 33683 of, and to add Sections 33681.12, 33681.13, and 33681.14 to, the Health and Safety Code, to amend Sections 97.31, 97.68, 98.02, 7203.1, 10752, 10752.1, 10753.2, 11001.5, and 11003 of, to amend and repeal Section 10754 of, to add Sections 96.81, 97.70, 97.71, 97.72, 97.73, 97.74, 97.75, 97.76, 97.77, and 10754.11 to, to repeal Sections 10753.8, 11000, and 11005.7 of, and to repeal and add Section 11005 of, the Revenue and Taxation Code, to amend Section 42205 of the Vehicle Code, to amend Section 40 of Chapter 91 of the Statutes of 1991, and to repeal Section 210 of Chapter 89 of the Statutes of 1991 and Section 29 of Chapter 100 the Statutes of 1993, relating to local government finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 5, 2004. Filed with Secretary of State August 5, 2004.]

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

SECTION 1. Section 41204.1 of the Education Code is amended to read:

41204.1. (a) (1) Pursuant to paragraph (2) of subdivision (b) of Section 41204, the Director of Finance shall annually adjust ''the percentage of General Fund revenues appropriated for school districts and community college districts, respectively, in the 1986–87 fiscal year'' for purposes of applying paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, to reflect those property tax revenue allocation modifications required by the qualifying provisions in a manner that ensures that those modifications will have no net fiscal impact upon the amounts that are otherwise required to be applied by the state for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

(2) For purposes of this section, ''qualifying provisions,'' means the amendments made to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code and Article 7

(commencing with Section 33680) of Chapter 6 of Part 1 of Division 24 of the Health and Safety Code during the 1991–92 Regular Session to the 2003–04 Regular Session, inclusive, and during any Extraordinary Session concurrently held during those session years, inclusive.

(b) Notwithstanding any other provision of law, for the 2004–05 fiscal year and each fiscal year thereafter, ''the percentage of General Fund revenues appropriated for school districts and community colleges districts, respectively, in fiscal year 1986–87,'' for purposes of paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution, shall be deemed to be the percentage of General Fund revenues that would have been appropriated for those entities if the qualifying provisions had been operative for the 1986–87 fiscal year.

(c) It is the intent of the Legislature in enacting the act adding this section to ensure both of the following:

(1) That the changes required by the qualifying provisions in the allocations of ad valorem property tax revenues do not have a net fiscal impact upon school districts, as defined in Section 41302.5, or community college districts.

(2) That the changes required by the qualifying provisions in the allocations of ad valorem property tax revenues do not have a net fiscal impact upon the amounts of revenue otherwise required to be applied by the state for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution.

SEC. 2. Section 6585 of the Government Code is amended to read:

6585. The definitions in this section shall govern the construction and interpretation of this article.

(a) ''Authority'' means an entity created pursuant to Article 1 (commencing with Section 6500). In the case of an authority issuing bonds pursuant to this chapter in which VLF receivables, as defined in subdivision (i), are pledged to the payment of the bonds, an authority shall consist of not less than 100 local agencies.

(b) ''Bond purchase agreement'' means a contractual agreement executed between the authority and the local agency whereby the authority agrees to purchase bonds of the local agency.

(c) ''Bonds'' means bonds (including, but not limited to, assessment bonds, redevelopment agency bonds, government issued mortgage bonds, and industrial development bonds), notes (including bond, revenue, tax, or grant anticipation notes), commercial paper, floating rate, and variable maturity securities, and any other evidences of indebtedness and also includes certificates of participation or lease-purchase agreements.

(d) ''Cost,'' as applied to a public capital improvement or portion thereof financed under this part, 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, easements, and interests acquired or used for a public capital improvement; 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 and equipment; finance charges; interest prior to, during, and for a period after, completion of that construction, as determined by the authority; provisions for working capital, reserves for principal and interest and for extensions, enlargements, additions, replacements, renovations, and improvements; the cost of architectural, engineering, financial and legal services, plans, specifications, estimates, administrative expenses, and other expenses necessary or incident to determining the feasibility of constructing any project or incident to the construction or acquisition or financing of any public capital improvement.

(e) ''Legislative body'' means the governing body of a local agency.

(f) ''Local agency'' means a party to the agreement creating the authority, or an agency or subdivision of that party, sponsoring a project of public capital improvements, or any city, county, city and county, authority, district, or public corporation of this state.

(g) ''Public capital improvements'' means one or more projects specified in Section 6546.

(h) ''Revenue'' means all income and receipts of the authority from a bond purchase agreement, bonds acquired by the authority, loans, installment sale agreements, and other revenue producing agreements entered into by the authority, projects financed by the authority, grants and other sources of income, VLF receivables purchased pursuant to Section 6588.5, and all interest or other income from any investment of any money in any fund or account established for the payment of principal or interest or premiums on bonds.

(i) ''VLF receivable'' means the right to payment of moneys due or to become due to a local agency out of funds payable in connection with vehicle license fees to a local agency pursuant to Section 10754.11 of the Revenue and Taxation Code.

(j) ''Working capital'' means money to be used by, or on behalf of, a local agency for any purpose for which a local agency may borrow money pursuant to Section 53852, or for any purpose for which a VLF receivable sold to an authority could have been used by the local agency.

SEC. 3. Section 6588 of the Government Code is amended to read:

6588. In addition to other powers specified in an agreement pursuant to Article 1 (commencing with Section 6500) and Article 2 (commencing with Section 6540), the authority may do any or all of the following:

(a) Adopt bylaws for the regulation of its affairs and the conduct of its business.

(b) Sue and be sued in its own name.

(c) Issue bonds, including, at the option of the authority, bonds bearing interest, to pay the cost of any public capital improvement, working capital, or liability or other insurance program. In addition, for any purpose for which an authority may execute and deliver or cause to be executed and delivered certificates of participation in a lease or installment sale agreement with any public or private entity, the authority, at its option, may issue or cause to be issued bonds, rather than certificates of participation, and enter into a loan agreement with the public or private entity.

(d) Engage the services of private consultants to render professional and technical assistance and advice in carrying out the purposes of this article.

(e) As provided by applicable law, employ and compensate bond counsel, financial consultants, and other advisers determined necessary by the authority in connection with the issuance and sale of any bonds.

(f) Contract for engineering, architectural, accounting, or other services determined necessary by the authority for the successful development of a public capital improvement.

(g) Pay the reasonable costs of consulting engineers, architects, accountants, and construction, land-use, recreation, and environmental experts employed by any sponsor or participant if the authority determines those services are necessary for the successful development of public capital improvements.

(h) Take title to, and sell by installment sale or otherwise, lands, structures, real or personal property, rights, rights-of-way, franchises, easements, and other interests in lands that are located within the state that the authority determines are necessary or convenient for the financing of public capital improvements, or any portion thereof.

(i) Receive and accept from any source, loans, contributions, or grants, in either money, property, labor, or other things of value, for, or in aid of, the construction financing, or refinancing of public capital improvement, or any portion thereof or for the financing of working capital or insurance programs, or for the payment of the principal of and interest on bonds if the proceeds of those bonds are used for one or more of the purposes specified in this section.

(j) Make secured or unsecured loans to any local agency in connection with the financing of capital improvement projects, working capital or insurance programs in accordance with an agreement between the authority and the local agency. However, no loan shall exceed the total cost of the public capital improvements, working capital or insurance

needs of the local agency as determined by the local agency and by the authority.

(k) Make secured or unsecured loans to any local agency in accordance with an agreement between the authority and the local agency to refinance indebtedness incurred by the local agency in connection with public capital improvements undertaken and completed.

(*l*) Mortgage all or any portion of its interest in public capital improvements and the property on which any project is located, whether owned or thereafter acquired, including the granting of a security interest in any property, tangible or intangible.

(m) Assign or pledge all or any portion of its interests in mortgages, deeds of trust, indentures of mortgage or trust, or similar instruments, notes, and security interests in property, tangible or intangible, of a local agency to which the authority has made loans, and the revenues therefrom, including payment or income from any interest owned or held by the authority, for the benefit of the holders of bonds issued to finance public capital improvements. The pledge of moneys, revenues, accounts, contract rights, or rights to payment of any kind made by or to the authority pursuant to the authority granted in this part shall be valid and binding from the time the pledge is made for the benefit of the pledgees and successors thereto, against all parties irrespective of whether the parties have notice of the claim.

(n) Lease the public capital improvements being financed to a local agency, upon terms and conditions that the authority deems proper; charge and collect rents therefor; terminate any lease upon the failure of the lessee to comply with any of the obligations of the lease; include in any lease provisions that the lessee shall have options to renew the lease for a period or periods, and at rents as determined by the authority; purchase or sell by an installment agreement or otherwise any or all of the public capital improvements; or, upon payment of all the indebtedness incurred by the authority for the financing or refinancing of the public capital improvements, the authority may convey any or all of the project to the lessee or lessees.

(o) Charge and apportion to local agencies that benefit from its services the administrative costs and expenses incurred in the exercise of the powers authorized by this article. These fees shall be set at a rate sufficient to recover, but not exceed, the authority's costs of issuance and administration. The fee charged to each local obligation acquired by the pool shall not exceed that obligation's proportionate share of those costs. The level of these fees shall be disclosed to the California Debt and Investment Advisory Commission pursuant to Section 6599.1.

(p) Issue, obtain, or aid in obtaining, from any department or agency of the United States or of the state, or any private company, any insurance

or guarantee to, or for, the payment or repayment of interest or principal, or both, or any part thereof, on any loan, lease, or obligation or any instrument evidencing or securing the same, made or entered into pursuant to this article.

(q) Notwithstanding any other provision of this article, enter into any agreement, contract, or any other instrument with respect to any insurance or guarantee; accept payment in the manner and form as provided therein in the event of default by a local agency; and assign any insurance or guarantee that acts as security for the authority's bonds.

(r) Enter into any agreement or contract, execute any instrument, and perform any act or thing necessary, convenient, or desirable to carry out any power authorized by this article.

(s) Invest any moneys held in reserve or sinking funds, or any moneys not required for immediate use or disbursement, in obligations that are authorized by law for the investment of trust funds.

(t) At the request of affected local agencies, combine and pledge revenues to public capital improvements for repayment of one or more series of bonds issued pursuant to this article.

(u) Delegate to any of its individual parties or other responsible individuals the power to act on its behalf subject to its general direction, guidelines, and oversight.

(v) Purchase, with the proceeds of its bonds or its revenue, bonds issued by any local agency at public or negotiated sale. Bonds purchased pursuant to this subdivision may be held by the authority or sold to public or private purchasers at public or negotiated sale, in whole or in part, separately or together with other bonds issued by the authority.

(w) Purchase, with the proceeds of its bonds or its revenue, VLF receivables sold to the authority pursuant to Section 6588.5. VLF receivables so purchased may be pledged to the payment of bonds issued by the authority or may be resold to public or private purchasers at public or negotiated sale, in whole or in part, separately or together with other VLF receivables purchased by the authority.

(x) Set any other terms and conditions on any purchase or sale pursuant to this section as it deems by resolution to be necessary, appropriate, and in the public interest, in furtherance of the purposes of this article.

SEC. 4. Section 6588.5 is added to the Government Code, to read:

6588.5. (a) An authority that was in existence at the time of the enactment of this section may purchase, with the proceeds of its bonds or its revenue, VLF receivables from one or more local agencies. The authority may pledge, assign, resell or otherwise transfer or hypothecate any VLF receivables for the purpose of securing bonds issued to finance the purchase price of the VLF receivables.

(b) Notwithstanding any other provision of law, local agencies may sell VLF receivables to the authority, at one time or from time to time, and to enter into one or more sales agreements with an authority as and on the terms the local agency deems appropriate. The sales agreement may include covenants of, and binding on, the local agency necessary to establish and maintain the security of bonds issued by the authority for the purpose of purchasing the VLF receivables and, if applicable, the exclusion from gross income of interest on the bonds for federal income tax purposes. Any transfer of some or all of a VLF receivable by a local agency to the authority under this article that the governing documents state is a sale shall be treated as an absolute sale and transfer of the property so transferred to the authority and not as a pledge or grant of a security interest by the local agency to secure a borrowing. The characterization of the transfer of any VLF receivable as an absolute sale by the local agency shall not be negated or adversely affected by any of the following:

(1) The fact that only a portion of the VLF receivable is transferred.

(2) By the local agency's acquisition of an ownership interest in any residual interest or a subordinate interest in the VLF receivable.

(3) By any characterization of the authority or its bonds for purposes of accounting, taxation, or securities regulation.

(4) By any other factor.

(c) On and after the effective date of each transfer of a VLF receivable under this article that the governing documents state is a sale, the local agency shall have no right, title, or interest in or to the VLF receivable transferred, and the VLF receivable so transferred shall be the property of the authority and not of the local agency, and shall be owned, received, held, and disbursed only by the authority or any trustee or agent of the authority appointed by the authority. Any sale of some or all of any VLF receivable shall automatically be perfected without the need for physical delivery, recordation, filing, or further act, and the provisions of Division 9 (commencing with Section 9101) of the Commercial Code and Sections 954.5 to 955.1, inclusive, of the Civil Code shall not apply to the sale. None of the VLF receivables sold by the local agency pursuant to this article shall be subject to garnishment, levy, execution, attachment, or other process, writ, including, but not limited to, a writ of mandate, or remedy in connection with the assertion or enforcement of any debt, claim, settlement, or judgment against the local agency. On or before the effective date of any sale of a VLF receivable, the local agency shall notify the Controller that the VLF receivable has been sold to the authority and irrevocably instruct the payor that, as of the effective date, payments on the VLF receivable so sold are to be made directly to the authority or any trustee or agent appointed by the authority.

(d) The state hereby covenants, for the benefit of the holders of any bonds issued by the authority pursuant to this article payable from VLF receivables purchased by the authority, that it will not take any action that would materially adversely affect the interest of the holders of these bonds or otherwise impair the security of these bonds, so long as any of these bonds remain outstanding.

SEC. 5. Section 6590 of the Government Code is amended to read:

6590. The authority may, from time to time, issue its bonds in the principal amount as the authority determines necessary to provide sufficient funds for its purposes, which may include, but shall not be limited to, providing funds for bond purchase agreements, payment of the purchase price of VLF receivables, payment of interest on bonds of the authority, establishment of reserves to secure the bonds, and other expenditures of the authority incident to issuance of the bonds. The authority may also issue bonds for the purpose of making loans to local agencies, to the extent those local agencies are authorized by law to borrow moneys, or to purchase VLF receivables from local agencies as provided in Section 6588.5, and the loan or sale proceeds shall be used by the local agencies to pay for public capital improvements, working capital, or insurance programs.

In the case of any authority in existence on January 1, 1988, no loans shall be made to local agencies for working capital or insurance, unless that purpose is first approved by resolution of the governing body of the authority by unanimous vote of all members of the governing body.

SEC. 6. Section 6591 of the Government Code is amended to read:

6591. (a) The authority is authorized from time to time to issue bonds to provide funds to achieve its purposes.

(b) Bonds may be authorized to finance a single public capital improvement, working capital, purchase of VLF receivables, or insurance program for a single local agency; a series of public capital improvements, working capital, purchases of VLF receivables, or insurance program for a single local agency; a single public capital improvement, working capital, or purchases of VLF receivables, insurance program for two or more local agencies; or a series of public capital improvements, working capital, purchases of VLF receivables, insurance programs for two or more local agencies.

(c) Bonds issued for the purpose of financing working capital shall be used to make loans to local agencies for any of the purposes for which a local agency may borrow money pursuant to Section 53852. The loans shall be repaid in accordance with the terms of Section 53854.

(d) Except as otherwise expressly provided by the authority, every issue of its bonds shall be general obligations of the authority payable from any revenues or moneys of the authority available therefor and not otherwise pledged. These revenues or moneys may include the proceeds

of additional bonds, subject only to any agreements with the holders of particular bonds pledging any particular revenues or moneys. Notwithstanding that the bonds may be payable from a special fund, these bonds shall be deemed to be negotiable instruments for all purposes, subject only to the bond registration provisions.

(e) The bonds may be issued as serial bonds or as term bonds, or the authority may issue bonds of both types. The bonds shall be authorized by resolution of the authority and shall, as provided by the resolution or indenture pursuant to which the bonds are issued, bear the date of issuance; the time of maturity, not exceeding 50 years from their date of issuance; bear the rate of interest, either fixed or variable, and, if variable, not in excess of the maximum rate of interest specified therein; be payable as to principal and interest at the time or times provided; be in the denominations provided; be in the form provided; carry the registration privileges provided; be executed in the manner provided; be payable in lawful money of the United States at the place or places provided within or without the state; and be subject to the terms of redemption provided.

(f) The bonds shall be sold by the authority at the time and in the manner set out in the authority's resolution. The sale may be a public or private sale, and for price or prices, and on terms and conditions as the authority determines proper, after giving due consideration to the recommendations of any local agency to be assisted from the proceeds of the bonds. Pending preparation of the definitive bonds, the authority may issue interim receipts, certificates, or temporary bonds which shall be exchanged for definitive bonds.

(g) In the case of bonds issued by an authority, on or after January 1, 1995, for the purpose of purchasing bonds of a local agency, all of the bonds of the local agency shall be purchased by the authority from the proceeds of the authority bonds within 90 days of the date of issuance of the authority bonds. Nothing in this subdivision shall be construed to preclude an authority from issuing parity bonds at any time.

SEC. 7. Section 6592 of the Government Code is amended to read:

6592. Any resolution authorizing any bonds or any issue of bonds may contain the following provisions, which shall be a part of the contract with the holders of the bonds to be authorized:

(a) Provisions pledging the full faith and credit of the authority, or pledging all or any part of the revenues of any public capital improvements, or any revenue-producing contract or contracts made by the authority with any local agency, any VLF receivables purchased pursuant to Section 6588.5, or any other moneys of the authority, to secure the payment of the bonds, and of any special account, subject to those agreements with bondholders as may then exist.

(b) Provisions setting out the rentals, fees, purchase payments, loan repayments, and other charges, and the amounts to be raised in each year thereby, and the use and disposition of the revenues.

(c) Provisions setting aside reserves or sinking funds, and the regulation and disposition thereof.

(d) Limitations on the right of the authority or its agent to restrict and regulate the use of the public capital improvements to be financed out of the proceeds of the bonds or any particular issue of bonds.

(e) Limitations on the purpose to which the proceeds of sale of any issue of bonds may be applied, and pledging the proceeds to secure the payment of the bonds or any issue of the bonds.

(f) Limitations on the issuance of additional bonds, the terms upon which additional bonds may be issued and secured, and the refunding of outstanding bonds.

(g) The procedure, if any, by which the terms of any contract with bondholders may be amended or abrogated, the amount of bonds and the holders thereof that are required to give consent thereto, and the manner in which the consent may be given.

(h) Limitations on expenditures for operating, administrative, or other expenses of the authority.

(i) Definitions of acts or omissions to act which constitute a default in the duties of the authority to holders of its obligations, and providing the rights and remedies of the holders in the event of a default.

(j) The mortgaging of any public capital improvements and the site thereof for the purpose of securing the bondholders.

(k) The mortgaging of land, improvements, or other assets owned by a local agency for the purpose of securing the bondholders.

(*l*) Procedures for the selection of public capital improvements to be financed with the proceeds of the bonds authorized by the resolution, if the bonds are to be sold in advance of designating the public capital improvements and the local agency to receive the financing.

SEC. 8. Section 6599.3 is added to the Government Code, to read:

6599.3. Notwithstanding any other provision of law, an action may be brought under Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure, to determine the validity of any bonds issued under this article to finance the purchase of bonds for local agencies, the financing of public capital improvements, or the purchase of VLF receivables pursuant to Section 6588.5 and any contracts of sale of VLF receivables entered into by any local agency, and any related documents. If an action is commenced, the action shall be brought in the jurisdiction in which the authority maintains its principal office and is not required to be brought in the jurisdiction or jurisdictions of any of the local agencies. However, publication of summons, as provided in Section 861 of the Code of Civil Procedure, shall be made in the county

in which the authority maintains its principal office and in each county in which any local agency that has sold bonds to the authority, for which a public capital improvement is being financed or that has entered into a sales agreement for a VLF receivable where the authority is located.

SEC. 8.5. Section 17617 is added to the Government Code, to read:

17617. The total amount due to each city, county, city and county, and special district, for which the state has determined, as of June 30, 2005, that reimbursement is required under Section 6 of Article XIII B of the California Constitution, shall be appropriated for payment to these entities over a period of not more than five years, commencing with the Budget Act for the 2006–07 fiscal year and concluding with the Budget Act for the 2011–12 fiscal year.

SEC. 9. Section 25350.55 of the Government Code is amended to read:

25350.55. (a) Prior to entering into an agreement to finance the lease or lease-purchase of property through the execution and delivery or issuance, as the case may be, of certificates of participation or lease revenue bonds, the board may elect, by resolution, to guarantee payment under that financing agreement in accordance with the following:

(1) A county that elects to participate under this section shall provide notice to the Controller of that election, which shall include a schedule for the payments to be made by the county under that financing agreement, and identify a trustee appointed by the county for the purposes of this section.

(2) In the event that, for any reason, the funds otherwise available to the county will not be sufficient to make any payment under the financing agreement at the time that payment is required, the county shall so notify the trustee. The trustee shall immediately communicate that information to the affected holders of certificates of participation or bondholders, and to the Controller.

(3) When the Controller receives notice from the trustee as described in paragraph (2), or the county fails to make any payment under the financing agreement at the time that payment is required, the Controller shall make an apportionment to the trustee in the amount of that required payment for the purpose of making that payment. The Controller shall make that payment only from funds received from the county auditor pursuant to paragraph (4).

(4) If either of the circumstances set forth in paragraphs (2) and (3) occur, the county shall immediately notify the county auditor and deliver to the county auditor a duly certified copy of the resolution of the board of supervisors adopted pursuant to Section 29530.5. The county auditor shall reduce the vehicle license fee adjustment amount set forth in Section 97.70 of the Revenue and Taxation Code and transmit those

funds to the Controller to the extent necessary to make the payments required by paragraphs (2) and (3).

(5) As an alternate to the procedure set forth in paragraphs (2) and (3), the board of supervisors may provide a transfer schedule in a notice to the Controller of its election to participate under this section. The transfer schedule shall set forth amounts to be transferred to the trustee and the date or dates for the transfers and the Controller shall, subject to the limitation in the second sentence of paragraph (3), make apportionments to the trustee in those amounts on the specified date or dates for the purpose of making those transfers.

(6) In the event that for any reason, the county is no longer obligated for any period to make all or a portion of the payments with respect to the lease or lease-purchase financed through the execution and delivery, or issuance, as the case may be, of certificates of participation or lease revenue bonds, the trustee shall notify the affected holders of certificates of participation or bondholders. The trustee shall also notify the Controller. Upon receipt of the notification, the Controller shall cease making the transfers. If after giving notice, the obligation of the county to make payments with respect to a lease or lease-purchase financed through the execution and delivery or issuance, as the case may be, of certificates of participation or lease revenue bonds is restored, the trustee shall so notify the affected holders of certificates of participation or bondholders and the Controller. Upon receipt of the notification, the Controller shall resume making the transfers.

(b) This section shall not be construed to obligate the State of California to make any payment to a county from the Motor Vehicle License Fee Account in the Transportation Tax Fund in any amount or pursuant to any particular allocation formula, or to make any other payment to a county, including, but not limited to, any payment in satisfaction of any debt or liability incurred or guaranteed by a county in accordance with this section.

SEC. 10. Section 18115 of the Health and Safety Code is amended to read:

18115. Commencing July 1, 1981, the vehicle license fee levied pursuant to Section 10751 of the Revenue and Taxation Code on manufactured homes and mobilehomes not subject to local property taxation pursuant to Part 13 (commencing with Section 5800) of Division 1 of the Revenue and Taxation Code, or commercial coaches, shall be paid to the department. The annual amount of the fee shall be a sum equal to 2 percent, and on and after January 1, 2005, 0.65 percent, of the market value of the manufactured home, mobilehome, or commercial coach. The market value shall be determined by the department upon the basis of the original sales price of the manufactured home, mobilehome, or commercial coach when first sold to a consumer

as a new manufactured home, mobilehome, or commercial coach. The annual amount of the fee charged to the owner of a manufactured home or mobilehome subject to a license fee which replaces a manufactured home or mobilehome destroyed, on or after January 1, 1982, as the result of a disaster declared by the Governor, and which meets the requirements of Chapter 2.6 (commencing with Section 172) of Part 1 of Division 1 of the Revenue and Taxation Code, shall be determined in accordance with Section 172.1 of the Revenue and Taxation Code. In the event any manufactured home, mobilehome, or commercial coach subject to this article is modified or added to at a cost of two hundred dollars ($200), or more, a copy of the building permit required for these modifications shall be entered in the permanent record of the manufactured home, mobilehome, or commercial coach and the department shall classify or reclassify the manufactured home, mobilehome, or commercial coach in its proper class as provided in Section 18115.5. These provisions shall not apply in the event that the modifications are necessary to enable a handicapped person to enter and use the manufactured home, mobilehome, or commercial coach.

SEC. 11. Section 33020 of the Health and Safety Code is amended to read:

33020. ''Redevelopment'' means the planning, development, replanning, redesign, clearance, reconstruction, or rehabilitation, or any combination of these, of all or part of a survey area, and the provision of those residential, commercial, industrial, public, or other structures or spaces as may be appropriate or necessary in the interest of the general welfare, including recreational and other facilities incidental or appurtenant to them and payments to school and community college districts in the fiscal years specified in Sections 33681, 33681.5, 33681.7, 33681.9, and 33681.12.

SEC. 12. Section 33333.2 of the Health and Safety Code is amended to read:

33333.2. (a) A redevelopment plan containing the provisions set forth in Section 33670 shall contain all of the following limitations. A redevelopment plan that does not contain the provisions set forth in Section 33670 shall contain the limitations in paragraph (4):

(1) (A) A time limit on the establishing of loans, advances, and indebtedness to be paid with the proceeds of property taxes received pursuant to Section 33670 to finance in whole or in part the redevelopment project, which may not exceed 20 years from the adoption of the redevelopment plan, except by amendment of the redevelopment plan as authorized by subparagraph (B). This limit, however, shall not prevent agencies from incurring debt to be paid from the Low and Moderate Income Housing Fund or establishing more debt in order to fulfill the agency's housing obligations under subdivision (a)

of Section 33333.8. The loans, advances, or indebtedness may be repaid over a period of time longer than this time limit as provided in this section. No loans, advances, or indebtedness to be repaid from the allocation of taxes shall be established or incurred by the agency beyond this time limitation. This limit shall not prevent agencies from refinancing, refunding, or restructuring indebtedness after the time limit if the indebtedness is not increased and the time during which the indebtedness is to be repaid is not extended beyond the time limit to repay indebtedness required by this section.

(B) The time limitation established by subparagraph (A) may be extended only by amendment of the redevelopment plan after the agency finds, based on substantial evidence, that (i) significant blight remains within the project area; and (ii) this blight cannot be eliminated without the establishment of additional debt. However, this amended time limitation may not exceed 30 years from the effective date of the ordinance adopting the redevelopment plan, except as necessary to comply with subdivision (a) of Section 33333.8.

(2) A time limit, not to exceed 30 years from the adoption of the redevelopment plan, on the effectiveness of the redevelopment plan. After the time limit on the effectiveness of the redevelopment plan, the agency shall have no authority to act pursuant to the redevelopment plan except to pay previously incurred indebtedness and to enforce existing covenants or contracts, unless the agency has not completed its housing obligations pursuant to subdivision (a) of Section 33333.8, in which case the agency shall retain its authority to implement requirements under subdivision (a) of Section 33333.8, including its ability to incur and pay indebtedness for this purpose, and shall use this authority to complete these housing obligations as soon as is reasonably possible.

(3) A time limit, not to exceed 45 years from the adoption of the redevelopment plan, to repay indebtedness with the proceeds of property taxes received pursuant to Section 33670. After the time limit established pursuant to this paragraph, an agency may not receive property taxes pursuant to Section 33670, except as necessary to comply with subdivision (a) of Section 33333.8.

(4) A time limit, not to exceed 12 years from the adoption of the redevelopment plan, for commencement of eminent domain proceedings to acquire property within the project area. This time limitation may be extended only by amendment of the redevelopment plan.

(b) If a redevelopment plan is amended to add territory, the amendment shall contain the time limits required by this section.

(c) When an agency is required to make a payment pursuant to Section 33681.9, the legislative body may amend the redevelopment plan to extend the time limits required pursuant to paragraphs (2) and (3)

of subdivision (a) by one year by adoption of an ordinance. In adopting this ordinance, neither the legislative body nor the agency is required to comply with Section 33354.6, Article 12 (commencing with Section 33450), or any other provision of this part relating to the amendment of redevelopment plans.

(d) When an agency is required pursuant to Section 33681.12 to make a payment to the county auditor for deposit in the county's Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, the legislative body may amend the redevelopment plan to extend the time limits required pursuant to paragraphs (2) and (3) of subdivision (a) by the following:

(1) One year for each year in which a payment is made, if the time limit for the effectiveness of the redevelopment plan established pursuant to paragraph (2) of subdivision (a) is 10 years or less from the last day of the fiscal year in which such a payment is made.

(2) One year for each year in which a payment is made, if both of the following apply:

(A) The time limit for the effectiveness of the redevelopment plan established pursuant to paragraph (2) of subdivision (a) is more than 10 years but less than 20 years from the last day of the fiscal year in which a payment is made.

(B) The legislative body determines in the ordinance adopting the amendment that, with respect to the project, all of the following apply:

(i) The agency is in compliance with the requirements of Section 33334.2 or 33334.6, as applicable.

(ii) The agency has adopted an implementation plan in accordance with the requirements of Section 33490.

(iii) The agency is in compliance with subdivisions (a) and (b) of Section 33413, to the extent applicable.

(iv) The agency is not subject to sanctions pursuant to subdivision (e) of Section 33334.12 for failure to expend, encumber, or disburse an excess surplus.

(3) This subdivision shall not apply to any redevelopment plan if the time limits for the effectiveness of the redevelopment plan established pursuant to paragraph (2) of subdivision (a) is more than 20 years after the last day of the fiscal year in which a payment is made.

(4) The legislative body by ordinance may adopt the amendments provided for under this subdivision following a public hearing. Notice of the public hearing shall be mailed to the governing body of each of the affected taxing entities at least 30 days prior to the hearing. Notice shall also be published in a newspaper of general circulation in the community at least once, not less than 10 days prior to the date of the public hearing. The ordinance shall contain a finding of the legislative

body that funds used to make a payment to the county's Educational Revenue Augmentation Fund pursuant to Section 33681.12 would otherwise have been used to pay the costs of projects and activities necessary to carry out the goals and objectives of the redevelopment plan. In adopting an ordinance pursuant to this subdivision, 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.

(e) This section shall apply only to redevelopment projects for which a final redevelopment plan is adopted pursuant to Article 5 (commencing with Section 33360) on or after January 1, 1994, and to amendments that add territory and that are adopted on or after January 1, 1994.

SEC. 13. 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.

(D) When an agency is required pursuant to Section 33681.12 to make a payment to the county auditor for deposit in the county's Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code, the legislative body may amend the redevelopment plan to extend the time limits required pursuant to subdivisions (a) and (b) by the following:

(i) One year for each year in which a payment is made, if the time limit for the effectiveness of the redevelopment plan established pursuant to subdivision (a) is 10 years or less from the last day of the fiscal year in which a payment is made.

(ii) One year for each year in which such a payment is made, if both of the following apply:

(I) The time limit for the effectiveness of the redevelopment plan established pursuant to subdivision (a) is more than 10 years but less than 20 years from the last day of the fiscal year in which a payment is made.

(II) The legislative body determines in the ordinance adopting the amendment that, with respect to the project, the following:

(IIa) The agency is in compliance with the requirements of Section 33334.2 or 33334.6, as applicable.

(IIb) The agency has adopted an implementation plan in accordance with the requirements of Section 33490.

(IIc) The agency is in compliance with subdivisions (a) and (b) of Section 33413, to the extent applicable.

(IId) The agency is not subject to sanctions pursuant to subdivision (e) of Section 33334.12 for failure to expend, encumber, or disburse an excess surplus.

(iii) This subparagraph shall not apply to any redevelopment plan if the time limit for the effectiveness of the redevelopment plan established pursuant to subdivision (a) is more than 20 years after the last day of the fiscal year in which such a payment is made.

(3) (A) The legislative body by ordinance may adopt the amendments provided for under this paragraph following a public hearing. Notice of the public hearing shall be mailed to the governing body of each affected taxing entity at least 30 days prior to the public hearing and published in a newspaper of general circulation in the community at least once, not less than 10 days prior to the date of the public hearing. The ordinance shall contain a finding of the legislative body that funds used to make a payment to the county's Educational Revenue Augmentation Fund pursuant to Section 33681.12 would

otherwise have been used to pay the costs of projects and activities necessary to carry out the goals and objectives of the redevelopment plan. In adopting an ordinance pursuant to this paragraph, 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) The time limit on the establishment of loans, advances, and indebtedness shall be deemed suspended and of no force or effect but only for the purpose of issuing bonds or other indebtedness the proceeds of which are used to make the payments required by Section 33681.12 if the following apply:

(i) The time limit on the establishment of loans, advances, and indebtedness required by this section prior to January 1, 2002, has expired and has not been eliminated pursuant to subparagraph (B).

(ii) The agency is required to make a payment pursuant to Section 33681.12.

(iii) The agency determines that in order to make the payment required by Section 33681.12, it is necessary to issue bonds or incur other indebtedness.

(iv) The proceeds of the bonds issued or indebtedness incurred are used solely for the purpose of making the payments required by Section 33681.12 and related costs.

The suspension of the time limit on the establishment of loans, advances, and indebtedness pursuant to this subparagraph shall not require the agency to make the payment to affected taxing entities required by Section 33607.7.

(4) (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. 14. Section 33672 of the Health and Safety Code is amended to read:

33672. As used in this article the word ''taxes'' shall include, but without limitation, all levies on an ad valorem basis upon land or real property. As used in this article, ''taxes'' shall not include any amounts of money deposited in a Sales and Use Tax Compensation Fund pursuant to Section 97.68 of the Revenue and Taxation Code or a Vehicle License Fee Property Tax Compensation Fund pursuant to Section 97.70 of the Revenue and Taxation Code.

SEC. 15. Section 33681.12 is added to the Health and Safety Code, to read:

33681.12. (a) (1) During the 2004–05 fiscal year, a redevelopment agency shall, prior to May 10, remit an amount equal to the amount

determined for that agency pursuant to subparagraph (I) of paragraph (2) to the county auditor for deposit in the county's Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code. During the 2005–06 fiscal year, a redevelopment agency shall, prior to May 10, remit an amount equal to the amount determined for that agency pursuant to subparagraph (I) of paragraph (2) to the county auditor for deposit in the county's Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(2) For the 2004–05 and 2005–06 fiscal years, on or before November 15, the Director of Finance shall do all of the following:

(A) Determine the net tax increment apportioned to each agency pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676, in the 2002–03 fiscal year.

(B) Determine the net tax increment apportioned to all agencies pursuant to Section 33670, excluding any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676, in the 2002–03 fiscal year.

(C) Determine a percentage factor by dividing one hundred twenty-five million dollars ($125,000,000) by the amount determined pursuant to subparagraph (B).

(D) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (A) by the percentage factor determined pursuant to subparagraph (C).

(E) Determine the total amount of property tax revenue apportioned to each agency pursuant to Section 33670, including any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676, in the 2002–03 fiscal year.

(F) Determine the total amount of property tax revenue apportioned to all agencies pursuant to Section 33670, including any amounts apportioned to affected taxing agencies pursuant to Section 33401, 33607.5, or 33676, in the 2002–03 fiscal year.

(G) Determine a percentage factor by dividing one hundred twenty-five million dollars ($125,000,000) by the amount determined pursuant to subparagraph (F).

(H) Determine an amount for each agency by multiplying the amount determined pursuant to subparagraph (E) by the percentage factor determined pursuant to subparagraph (G).

(I) Add the amount determined pursuant to subparagraph (D) to the amount determined pursuant to subparagraph (H).

(J) Notify each agency and each legislative body of the amount determined pursuant to subparagraph (I).

(K) Notify each county auditor of the amounts determined pursuant to subparagraph (I) for each agency in his or her county.

(3) The obligation of any agency to make the payments required pursuant to this subdivision shall be subordinate to the lien of any pledge of collateral securing, directly or indirectly, the payment of the principal, or interest on any bonds of the agency including, without limitation, bonds secured by a pledge of taxes allocated to the agency pursuant to Section 33670.

(b) (1) Notwithstanding Sections 33334.2, 33334.3, and 33334.6, and any other provision of law, in order to make the full allocation required by this section, an agency may borrow up to 50 percent of the amount required to be allocated to the Low and Moderate Income Housing Fund pursuant to Sections 33334.2, 33334.3, and 33334.6 during the 2004–05 fiscal year and, if applicable, the 2005–06 fiscal year, unless executed contracts exist that would be impaired if the agency reduced the amount allocated to the Low and Moderate Income Housing Fund pursuant to the authority of this subdivision.

(2) As a condition of borrowing pursuant to this subdivision, an agency shall make a finding that there are insufficient other moneys to meet the requirements of subdivision (a). Funds borrowed pursuant to this subdivision shall be repaid in full within 10 years following the date on which moneys are remitted to the county auditor for deposit in the county's Educational Revenue Augmentation Fund pursuant to subdivision (a).

(c) In order to make the allocation required by this section, an agency may use any funds that are legally available and not legally obligated for other uses, including, but not limited to, reserve funds, proceeds of land sales, proceeds of bonds or other indebtedness, lease revenues, interest, and other earned income. No moneys held in a low- and moderate-income fund as of July 1 of the applicable fiscal year may be used for this purpose.

(d) The legislative body shall by March 1 report to the county auditor as to how the agency intends to fund the allocation required by this section, or that the legislative body intends to remit the amount in lieu of the agency pursuant to Section 33681.14.

(e) The allocation obligations imposed by this section, including amounts owed, if any, created under this section, are hereby declared to be an indebtedness of the redevelopment project to which they relate, payable from taxes allocated to the agency pursuant to Section 33670, and shall constitute an indebtedness of the agency with respect to the redevelopment project until paid in full.

(f) It is the intent of the Legislature, in enacting this section, that these allocations directly or indirectly assist in the financing or refinancing, in whole or in part, of the community's redevelopment project pursuant to Section 16 of Article XVI of the California Constitution.

(g) In making the determinations required by subdivision (a), the Director of Finance shall use those amounts reported as the ''Tax Increment Retained by Agency'' for all agencies and for each agency in the report of the Controller pursuant to Section 12463.3 of the Government Code for the 2002–03 fiscal year.

(h) If revised reports have been accepted by the Controller on or before September 1, 2005, the Director of Finance shall use appropriate data that has been certified by the Controller for the purpose of making the determinations required by subdivision (a).

SEC. 16. Section 33681.13 is added to the Health and Safety Code, to read:

33681.13. (a) (1) For the purpose of this section, ''existing indebtedness'' means one or more of the following obligations incurred by a redevelopment agency prior to the effective date of this section, the payment of which is to be made in whole or in part, directly or indirectly, out of taxes allocated to the agency pursuant to Section 33670, and that is required by law or provision of the existing indebtedness to be made during the fiscal year of the relevant allocation required by Section 33681.12.

(A) Bonds, notes, interim certificates, debentures, or other obligations issued by the agency whether funded, refunded, assumed, or otherwise pursuant to Article 5 (commencing with Section 33640).

(B) Loans or moneys advanced to the agency, including, but not limited to, loans from federal, state, or local agencies, or a private entity.

(C) A contractual obligation that, if breached, could subject the agency to damages or other liabilities or remedies.

(D) An obligation incurred pursuant to Section 33445.

(E) Indebtedness incurred pursuant to Section 33334.2.

(F) An amount, to be expended for the operation and administration of the agency, that may not exceed 90 percent of the amount spent for those purposes in the 2002–03 fiscal year.

(G) Obligations imposed by law with respect to activities that occurred prior to the effective date of the act that adds this section.

(2) Existing indebtedness incurred prior to the effective date of this section may be refinanced, refunded, or restructured after that date, and shall remain existing indebtedness for the purposes of this section, if the annual debt service during that fiscal year does not increase over the prior fiscal year and the refinancing does not reduce the ability of the agency to make the payment required by subdivision (a) of Section 33681.12.

(3) For the purposes of this section, indebtedness shall be deemed to be incurred prior to the effective date of this section if the agency has entered into a binding contract subject to normal marketing conditions, to deliver the indebtedness, or if the redevelopment agency has received bids for the sale of the indebtedness prior to that date and the indebtedness is issued for value and evidence thereof is delivered to the initial purchaser no later than 30 days after the date of the contract or sale.

(b) During the 2004–05 and 2005–06 fiscal years, an agency that has adopted a resolution pursuant to subdivision (c) may, pursuant to subdivision (a) of Section 33681.12, allocate to the auditor less than the amount required by subdivision (a) of Section 33681.12, if the agency finds that either of the following has occurred:

(1) That the difference between the amount allocated to the agency and the amount required by subdivision (a) of Section 33681.12 is necessary to make payments on existing indebtedness that are due or required to be committed, set aside, or reserved by the agency during the applicable fiscal year and that are used by the agency for that purpose, and the agency has no other funds that can be used to pay this existing indebtedness, and no other feasible method to reduce or avoid this indebtedness.

(2) The agency has no other funds to make the allocation required by subdivision (a) of Section 33681.12.

(c) (1) Any agency that, pursuant to subdivision (b), intends to allocate to the auditor less than the amount required by subdivision (a) of Section 33681.12 shall adopt, prior to December 31 of the applicable fiscal year, after a noticed public hearing, a resolution that lists all of the following:

(A) Each existing indebtedness incurred prior to the effective date of this section.

(B) Each indebtedness on which a payment is required to be made during the applicable fiscal year.

(C) The amount of each payment, the time when it is required to be paid, and the total of the payments required to be made during the applicable fiscal year. For indebtedness that bears interest at a variable rate, or for short-term indebtedness that is maturing during the fiscal year and that is expected to be refinanced, the amount of payments during the fiscal year shall be estimated by the agency.

(2) The information contained in the resolution required by this subdivision shall be reviewed for accuracy by the chief fiscal officer of the agency.

(3) The legislative body shall additionally adopt the resolution required by this section.

(d) (1) Any agency that, pursuant to subdivision (b), determines that it will be unable either in the 2004–05 or the 2005–06 fiscal year, to

allocate the full amount required by subdivision (a) of Section 33681.12 shall, subject to paragraph (3), enter into an agreement with the legislative body by February 15 of the applicable fiscal year, to fund the payment of the difference between the full amount required to be paid pursuant to subdivision (a) of Section 33681.12 and the amount available for allocation by the agency.

(2) The obligations imposed by paragraph (1) are hereby declared to be indebtedness incurred by the redevelopment agency to finance a portion of a redevelopment project within the meaning of Section 16 of Article XVI of the California Constitution. This indebtedness shall be payable from tax revenues allocated to the agency pursuant to Section 33670, and any other funds received by the agency. The obligations imposed by paragraph (1) shall remain an indebtedness of the agency to the legislative body until paid in full, or until the agency and the legislative body otherwise agree.

(3) The agreement described in paragraph (1) shall be subject to these terms and conditions specified in a written agreement between the legislative body and the agency.

(e) If the agency fails, under either Section 33681.12 or subdivision (d), to transmit the full amount of funds required by Section 33681.12, is precluded by court order from transmitting that amount, or is otherwise unable to meet its full obligation pursuant to Section 33681.12, the county auditor, by no later than May 15 of the applicable fiscal year, shall transfer any amount necessary to meet the obligation determined for that agency in paragraph (1) of subdivision (c) of Section 33681.12 from the legislative body's allocations pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code.

SEC. 17. Section 33681.14 is added to the Health and Safety Code, to read:

33681.14. (a) In lieu of the remittance required by Section 33681.12, during either the 2004–05 or 2005–06 fiscal year, a legislative body may, prior to May 10 of the applicable fiscal year, remit an amount equal to the amount determined for the agency pursuant to subparagraph (I) of paragraph (2) of subdivision (a) of Section 33681.12 to the county auditor for deposit in the county's Educational Revenue Augmentation Fund created pursuant to Article 3 (commencing with Section 97) of Chapter 6 of Part 0.5 of Division 1 of the Revenue and Taxation Code.

(b) The legislative body may make the remittance authorized by this section from any funds that are legally available for this purpose. No moneys held in an agency's Low and Moderate Income Housing Fund shall be used for this purpose.

(c) If the legislative body, pursuant to subdivision (d) of Section 33681.12, reported to the county auditor that it intended to remit the

amount in lieu of the agency and the legislative body fails to transmit the full amount as authorized by this section by May 10 of the applicable fiscal year, the county auditor, no later than May 15 of the applicable fiscal year, shall transfer an amount necessary to meet the obligation from the legislative body's allocations pursuant to Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code. If the amount of the legislative body's allocations are not sufficient to meet this obligation, the county auditor shall transfer an additional amount necessary to meet this obligation from the property tax increment revenue apportioned to the agency pursuant to Section 33670, provided that no moneys allocated to the agency's Low and Moderate Income Housing Fund shall be used for this purpose.

SEC. 18. Section 33683 of the Health and Safety Code is amended to read:

33683. For the purpose of calculating the amount that has been divided and allocated to the redevelopment agency to determine whether the limitation adopted pursuant to Section 33333.2 or 33333.4 or pursuant to agreement or court order has been reached, any payments made pursuant to subdivision (a) of Sections 33681, 33681.5, 33681.7, 33681.9, and 33681.12 or subdivision (d) of Sections 33681.8, 33681.10, 33682, and 33682.5 with property tax revenues shall be deducted from the amount of property tax dollars deemed to have been received by the agency.

SEC. 19. Section 96.81 is added to the Revenue and Taxation Code, to read:

96.81. Notwithstanding any other provision of law, the property tax apportionment factors applied in allocating property tax revenues in a county for which a Controller's audit conducted under Section 12468 of the Government Code between July 1, 1993, and June 30, 2001, determined that an allocation method was required to be adjusted and a reallocation was required for prior fiscal years, are deemed to be correct. However, for the 2001-02 fiscal year and each fiscal year thereafter, property tax apportionment factors applied in allocating property tax revenues in a county described in the preceding sentence shall be determined on the basis of property tax apportionment factors for prior fiscal years that have been fully corrected and adjusted, pursuant to the review and recommendation of the Controller, as would be required in the absence of the preceding sentence.

SEC. 20. Section 97.31 of the Revenue and Taxation Code is amended to read:

97.31. (a) (1) The Director of Finance shall direct the county auditor to reduce, in the 1993–94 fiscal year, the amount of the transfer to the Educational Revenue Augmentation Fund determined pursuant to subdivision (a) of Section 97.3 for any eligible county in accordance

with subdivision (b) of this section, and also shall direct the county auditor to reduce, in the 1993–94 fiscal year, the amount of that transfer for certain counties in accordance with subdivision (c). The total amount of the reductions for all counties made for the 1993–94 fiscal year pursuant to subdivision (b) shall not exceed two million dollars ($2,000,000). For the 1994–95 fiscal year and each fiscal year thereafter, ad valorem property tax revenue allocations made pursuant to subdivision (a) of Section 96.1 shall fully incorporate the adjustments required by this section.

(2) For purposes of this section, an ''eligible county'' is a county with a population of less than 350,000, as reported in the 1990 federal census that had a fire element of the tax bill in 1977–78, that continues to fund some portion of those costs from the county general fund in 1993–94, and that provides these services in the same manner as a special district less than countywide and has so indicated in the Controller's Report on Financial Transactions Concerning Counties.

(b) (1) For each eligible county, the county auditor may submit the following information to the Director of Finance not later than November 1, 1993:

(A) The amount of property tax allocated to the county fire district in the 1977–78 fiscal year.

(B) The amount allocated from the county budget to the county fire district in the 1978–79 fiscal year.

(C) The amount of property tax reduction for the county fire district attributable to the passage of Article XIII A of the California Constitution by the voters in the primary election in June 1978.

(D) The amount of money allocated from the county budget to the county fire district in the 1993–94 fiscal year.

(E) The amount allocated to the county fire district from the Special District Augmentation Fund in the 1992–93 fiscal year.

(2) For each eligible county that submits to the Director of Finance by November 1, 1993, the information described in paragraph (1), the Director of Finance shall make the following calculations:

(A) Multiply the amount of property tax allocated to the county fire district in the 1977–78 fiscal year by the change in the value of the property tax base for the county from the 1977–78 fiscal year to the 1978–79 fiscal year.

(B) Subtract the amount reported pursuant to subparagraph (C) of paragraph (1) from the amount determined pursuant to subparagraph (A).

(C) Multiply the amount determined pursuant to subparagraph (B) by an amount determined by the Director of Finance to be the change in assessed value for the county from the 1978–79 fiscal year to the 1993–94 fiscal year.

(D) Multiply the amount reported pursuant to subparagraph (E) of paragraph (1) by 1.038.

(E) Add the amount determined pursuant to subparagraph (C) to the amount determined pursuant to subparagraph (D).

(F) Subtract the amount determined pursuant to subparagraph (E) from the amount reported pursuant to subparagraph (D) of paragraph (1).

(3) The Director of Finance shall determine the sum of all the amounts determined pursuant to subparagraph (F) of paragraph (2).

(4) If the sum determined pursuant to paragraph (3) is greater than two million dollars ($2,000,000), then the Director of Finance shall proportionately reduce the amount for each county so that the total of the amounts for all counties does not exceed two million dollars ($2,000,000). If the sum determined pursuant to subdivision (e) does not exceed two million dollars ($2,000,000), then the Director of Finance shall not reduce the amount determined for each county.

(5) The Director of Finance shall by January 15, 1994, notify each county of its reduction in the amount to be transferred to the Educational Revenue Augmentation Fund pursuant to subdivision (a) of Section 97.3. The maximum amount of the reduction that may be authorized pursuant to this subdivision is one-half the amount determined pursuant to subparagraph (F) of paragraph (2).

(c) The amount to be transferred from a county to an Educational Revenue Augmentation Fund pursuant to subdivision (a) of Section 97.3 shall be reduced by one hundred thousand dollars ($100,000) for the County of Madera and by two hundred thousand dollars ($200,000) for the County of Tulare.

SEC. 20.5. Section 97.68 of the Revenue and Taxation Code is amended to read:

97.68. Notwithstanding any other provision of law, in allocating ad valorem property tax revenue allocations for each fiscal year during the fiscal adjustment period, all of the following apply:

(a) (1) The total amount of ad valorem property tax revenue otherwise required to be allocated to a county's Educational Revenue Augmentation Fund shall be reduced by the countywide adjustment amount.

(2) The countywide adjustment amount shall be deposited in a Sales and Use Tax Compensation Fund that shall be established in the treasury of each county.

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

(1) ''Fiscal adjustment period'' means the period beginning with the 2004–05 fiscal year and continuing through the fiscal year in which the Director of Finance notifies the State Board of Equalization pursuant to subdivision (b) of Section 99006 of the Government Code.

(2) Except as otherwise provided in subdivision (d), the ''countywide adjustment amount'' means the combined total revenue loss of the county and each city in the county that is annually estimated by the Director of Finance, based upon the actual amount of sales and use tax revenues transmitted under Section 7204 in that county in the prior fiscal year and any projected growth on that amount for the current fiscal year as determined by the State Board of Equalization and reported to the director on or before August 15 of each fiscal year during the fiscal adjustment period, to result for each of those fiscal years from the 0.25 percent reduction in local sales and use rate tax authority applied by Section 7203.1. The director shall adjust the estimates described in this paragraph if the board reports to him or her any changes in the projected growth in local sales and use tax revenues for the current fiscal year.

(3) ''In lieu local sales and use tax revenues'' means those revenues that are transferred under this section to a county or a city from a Sales and Use Tax Compensation Fund or an Educational Revenue Augmentation Fund.

(c) Except as otherwise provided in subdivision (d), for each fiscal year during the fiscal adjustment period, in lieu sales and use tax revenues in the Sales and Use Tax Compensation Fund shall be allocated among the county and the cities in the county, and those allocations shall be subsequently adjusted, as follows:

(1) The Director of Finance shall, on or before September 1 of each fiscal year during the fiscal adjustment period, notify each county auditor of that portion of the countywide adjustment amount for that fiscal year that is attributable to the county and to each city within that county.

(2) The county auditor shall allocate revenues in the Sales and Use Tax Compensation Fund among the county and cities in the county in the amounts described in paragraph (1). The auditor shall allocate one-half of the amount described in paragraph (1) in each January during the fiscal adjustment period and shall allocate the balance of that amount in each May during the fiscal adjustment period.

(3) After the end of each fiscal year during the fiscal adjustment period, other than a fiscal year subject to subdivision (d), the Director of Finance shall, based on the actual amount of sales and use tax revenues that were not transmitted for the prior fiscal year, recalculate each amount estimated under paragraph (1) and notify the county auditor of the recalculated amount.

(4) If the amount recalculated under paragraph (3) for the county or any city in the county is greater than the amount allocated to that local agency under paragraph (2), the county auditor shall, in the fiscal year next following the fiscal year for which the allocation was made, transfer

an amount of ad valorem property tax revenue equal to this difference from the Sales and Use Tax Compensation Fund to that local agency.

(5) If the amount recalculated under paragraph (3) for the county or any city in the county is less than the amount allocated to that local agency under paragraph (2), the county auditor shall, in the fiscal year next following the fiscal year for which the allocation was made, reduce the total amount of ad valorem property tax revenue otherwise allocated to that city or county from the Sales and Use Tax Compensation Fund by an amount equal to this difference and instead allocate this difference to the county Educational Revenue Augmentation Fund.

(6) If there is an insufficient amount of moneys in a county's Sales and Use Tax Compensation Fund to make the transfers required by paragraph (4), the county auditor shall transfer from the county Educational Revenue Augmentation Fund an amount sufficient to make the full amount of these transfers.

(d) Notwithstanding any other provision of this section, when Section 7203.1 ceases to be operative , all of the following apply:

(1) If Section 7203.1 ceases to be operative on an October 1 of a fiscal year during the fiscal adjustment period, all of the following apply:

(A) The "countywide adjustment amount" for that fiscal year means an amount equal to sum of the following two amounts:

(i) The combined total revenue loss of the county and each city in the county that is estimated by the director, based upon actual sales and use tax revenues transmitted under Section 7204 for the first quarter of the prior fiscal year as determined by the State Board of Equalization and reported to the director on or before that August 15, to result for the first quarter of the current fiscal year from the 0.25 percent reduction in local sales and use tax rate authority applied by Section 7203.1.

(ii) The difference between the following two amounts:

(I) The total amount that was allocated to the county and each city in the county under subdivision (c) for the prior fiscal year.

(II) The actual total amount of local sales and use tax revenue that was not transmitted the county or city and county and each city in the county for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1.

(B) On or before January 31 of that fiscal year, the auditor shall allocate to the county and each city in the county that portion of the countywide adjustment amount for that fiscal year that is attributable to the county and each city in the county.

(C) On or before May 1 of that fiscal year, the State Board of Equalization shall report to the director the actual total amount of local sales and use tax revenue that was not transmitted to the county and each city in the county in that fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section

7203.1. On or before May 1 of that fiscal year, the director shall do both of the following:

(i) Determine the difference between the following two amounts:

(I) The amount specified in clause (i) of subparagraph (A) that was allocated to the county and each city in the county for that fiscal year under subparagraph (B).

(II) The actual total amount of local sales and use tax revenue that was not transmitted to the county and each city in the county for that fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1.

(ii) Notify the auditor of each county of the amounts determined under clause (i) for his or her county and all of the cities in that county.

(D) (i) If, for any county or city, the amount described in subclause (I) of clause (i) of subparagraph (C) is greater than the amount described in subclause (II) of clause (i) of subparagraph (C), the county auditor shall, on or before May 31 of that fiscal year, reallocate from the entity to the county Educational Revenue Augmentation Fund the difference between those amounts.

(ii) If, for any county or city, the amount described in subclause (I) of clause (i) of subparagraph (C) is less than the amount described in subclause (II) of clause (i) of subparagraph (C), the county auditor shall, on or before May 31 of that fiscal year, reallocate from the county Educational Revenue Augmentation Fund to that entity the difference between those amounts.

(2) If Section 7203.1 ceases to be operative on a January 1 of a fiscal year during the fiscal adjustment period, all of the following apply:

(A) The ''countywide adjustment amount'' for that fiscal year means an amount equal to the sum of the following two amounts:

(i) The combined total revenue loss of the county and each city in the county that is estimated by the director, based upon actual sales and use tax revenues transmitted under Section 7204 for the first and second quarters of the prior fiscal year as determined by the State Board of Equalization and reported to the director on or before that August 15, to result for the first and second quarters of that fiscal year from the 0.25 percent reduction in local sales and use tax rate authority applied by Section 7203.1.

(ii) The difference between the following two amounts:

(I) The total amount that was allocated to the county and each city in the county under subdivision (c) for the prior fiscal year.

(II) The actual total amount of local sales and use tax revenue that was not transmitted the county or city and county and each city in the county for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1.

(B) The auditor shall allocate to the county and each city in the county that portion of the countywide adjustment amount for that fiscal year that is attributable to the county and each city in the county. One-half of this amount shall be allocated on or before January 31 of that fiscal year and the other one-half of that amount shall be allocated on or before May 31 of that fiscal year.

(C) On or before June 30 of that fiscal year, the State Board of Equalization shall report to the director the actual total amount of local sales and use tax revenue that was not transmitted to the county and each city in the county for that fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1. On or before June 30 of that fiscal year, the director shall do both of the following:

(i) Determine the difference between the following two amounts:

(I) The amount specified in clause (i) of subparagraph (A) that was allocated to the county and each city in the county for that fiscal year under subparagraph (B).

(II) The actual total amount of local sales and use tax revenue that was not transmitted to the county and each city in the county for that fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1.

(ii) Notify the auditor of each county of the amounts determined under clause (i) for his or her county and all of the cities in that county.

(D) (i) If, for any county or city, the amount described in subclause (I) of clause (i) of subparagraph (C) is greater than the amount described in subclause (II) of clause (i) of subparagraph (C), the county auditor shall, on or before January 31 of the following fiscal year, reallocate from the entity to the county Educational Revenue Augmentation Fund the difference between those amounts.

(ii) If, for any county or city, the amount described in subclause (I) of clause (i) of subparagraph (C) is less than the amount described in subclause (II) of clause (i) of subparagraph (C), the county auditor shall, on or before January 31 of the following fiscal year, reallocate from the county Educational Revenue Augmentation Fund to that entity the difference between those amounts.

(3) If Section 7203.1 ceases to be operative on an April 1 of a fiscal year during the fiscal adjustment period, all of the following apply:

(A) On or before May 1 of that fiscal year, the director shall determine and report to the auditor of each county that portion of the countywide adjustment amount that is attributable to the estimated sales and use tax revenue losses, resulting from the rate suspension applied by Section 7203.1, for the fourth quarter of that fiscal year for the county and each city in the county.

(B) The auditor shall reduce the total amount that is otherwise required to be allocated in May of that fiscal year from the county Sales and Use Tax Compensation Fund to the county and each city in the county by the amount reported by the director with respect to that entity under subparagraph (A). After the May allocations have been made, the auditor shall transfer any moneys remaining in the county Sales and Use Tax Compensation Fund to the county Educational Revenue Augmentation Fund.

(C) On or before January 1 of the next fiscal year, the State Board of Equalization shall report to the director the actual total amount of local sales and use tax revenue that was not transmitted to the county and each city in the county for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1. On or before January 1 of that fiscal year, the director shall do both of the following:

(i) Determine the difference between the following two amounts:

(I) The total amount that was allocated to the county and each city in the county for the prior fiscal year under subdivision (c), as adjusted under subparagraph (B).

(II) The actual total amount of local sales and use tax revenue that was not transmitted to the county and each city in the county for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1.

(ii) Notify the auditor of each county of the amounts determined under clause (i) for his or her county and all of the cities in that county.

(D) (i) If, for any county or city, the amount described in subclause (I) of clause (i) of subparagraph (C) is greater than the amount described in subclause (II) of clause (i) of subparagraph (C), the county auditor shall, on or before January 31 of that fiscal year, reallocate from the entity to the county Educational Revenue Augmentation Fund the difference between those amounts.

(ii) If, for any county or city, the amount described in subclause (I) of clause (i) of subparagraph (C) is less than the amount described in subclause (II) of clause (i) of subparagraph (C), the county auditor shall, on or before January 31 of the following fiscal year, reallocate from the county Educational Revenue Augmentation Fund to that entity the difference between those amounts.

(4) If Section 7203.1 ceases to be operative on a July 1, all of the following apply:

(A) On or before January 1 of that fiscal year, the State Board of Equalization shall notify the Director of Finance of the actual total amount of local sales and use tax revenue that was not transmitted to each county and city for the prior fiscal year as a result of the 0.25 percent

suspension of local sales and use tax authority applied by Section 7203.1.

(B) On or before January 31 of that fiscal year, the director shall do both of the following:

(i) Determine for each city, county, and city and county, the difference between the following two amounts:

(I) The total amount that was allocated to that entity under subdivision (c) for the prior fiscal year.

(II) The actual total amount of local sales and use tax revenue that was not transmitted to the entity for the prior fiscal year as a result of the 0.25 percent suspension of local sales and use tax authority applied by Section 7203.1.

(ii) Notify the auditor of each county of the amounts determined under clause (i) for his or her county and all of the cities in that county.

(C) (i) If, for any county or city, the amount described in subclause (I) of clause (i) of subparagraph (B) is greater than the amount described in subclause (II) of clause (i) of subparagraph (B), the county auditor shall, on or before January 31 of that fiscal year, reallocate from the entity to the county Educational Revenue Augmentation Fund the difference between those amounts.

(ii) If, for any county or city, the amount described in subclause (I) of clause (i) of subparagraph (B) is less than the amount described in subclause (II) of clause (i) of subparagraph (B), the county auditor shall, on or before January 31 of the following fiscal year, reallocate from the county Educational Revenue Augmentation Fund to that entity the difference between those amounts.

(e) For the 2005–06 fiscal year and each fiscal year thereafter, the amounts determined under subdivision (a) of Section 96.1, or any successor to that provision, may not reflect any portion of any property tax revenue allocation required by this section for a preceding fiscal year.

(f) This section may not be construed to do any of the following:

(1) Reduce any allocations of excess, additional, or remaining funds that would otherwise have been allocated to cities, counties, cities and counties, or special districts pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.2, clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Section 97.3, or Article 4 (commencing with Section 98), had this section not been enacted. The allocation made pursuant to subdivisions (a) and (c) shall be adjusted to comply with this paragraph.

(2) Require an increased ad valorem property tax revenue allocation to a community redevelopment agency.

(3) Alter the manner in which ad valorem property tax revenue growth from fiscal year to fiscal year is determined or allocated in a county.

(g) Existing tax exchange or revenue sharing agreements, entered into prior to the operative date of this section, between local agencies or between local agencies and nonlocal agencies shall be deemed to be temporarily modified to account for the reduced sales and use tax revenues, resulting from the temporary reduction in the local sales and use tax rate, with those reduced revenues to be replaced in kind by property tax revenue from a Sales and Use Tax Compensation Fund or an Educational Revenue Augmentation Fund, on a temporary basis, as provided by this section.

SEC. 21. Section 97.70 is added to the Revenue and Taxation Code, to read:

97.70. Notwithstanding any other provision of law, for the 2004–05 fiscal year and for each fiscal year thereafter, all of the following apply:

(a) (1) (A) The auditor shall reduce the total amount of ad valorem property tax revenue that is otherwise required to be allocated to a county's Educational Revenue Augmentation Fund by the countywide vehicle license fee adjustment amount.

(B) If, for the fiscal year, after complying with Section 97.68 there is not enough ad valorem property tax revenue that is otherwise required to be allocated to a county Educational Revenue Augmentation Fund for the auditor to complete the allocation reduction required by subparagraph (A), the auditor shall additionally reduce the total amount of ad valorem property tax revenue that is otherwise required to be allocated to all school districts and community college districts in the county for that fiscal year by an amount equal to the difference between the countywide vehicle license fee adjustment amount and the amount of ad valorem property tax revenue that is otherwise required to be allocated to the county Educational Revenue Augmentation Fund for that fiscal year. This reduction for each school district and community college district in the county shall be the percentage share of the total reduction that is equal to the proportion that the total amount of ad valorem property tax revenue that is otherwise required to be allocated to the school district or community college district bears to the total amount of ad valorem property tax revenue that is otherwise required to be allocated to all school districts and community college districts in a county. For purposes of this subparagraph, ''school districts'' and ''community college districts'' do not include any districts that are excess tax school entities, as defined in Section 95.

(2) The countywide vehicle license fee adjustment amount shall be allocated to the Vehicle License Fee Property Tax Compensation Fund that shall be established in the treasury of each county.

(b) (1) The auditor shall allocate moneys in the Vehicle License Fee Property Tax Compensation Fund according to the following:

(A) Each city in the county shall receive its vehicle license fee adjustment amount.

(B) Each county and city and county shall receive its vehicle license fee adjustment amount.

(2) The auditor shall allocate one-half of the amount specified in paragraph (1) on or before January 31 of each fiscal year, and the other one-half on or before May 31 of each fiscal year.

(c) For purposes of this section, all of the following apply:

(1) ''Vehicle license fee adjustment amount'' for a particular city, county, or a city and county means, subject to an adjustment under paragraph (2) and Section 97.71, all of the following:

(A) For the 2004–05 fiscal year, an amount equal to the difference between the following two amounts:

(i) The estimated total amount of revenue that would have been deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund, including any amounts that would have been certified to the Controller by the auditor of the County of Ventura under subdivision (j) of Section 98.02, as that section read on January 1, 2004, for distribution under the law in effect on January 1, 2004, to the county, city and county, or city for the 2004–05 fiscal year if the fee otherwise due under the Vehicle License Fee Law (Pt. 5 (commencing with Section 10701) of Div. 2) was 2 percent of the market value of a vehicle, as specified in Section 10752 and 10752.1 as those Sections read on January 1, 2004.

(ii) The estimated total amount of revenue that is required to be distributed from the Motor Vehicle License Fee Account in the Transportation Tax Fund to the county, city and county, and each city in the county for the 2004–05 fiscal year under Section 11005, as that section read on the operative date of this section.

(B) (i) Subject to an adjustment under clause (ii), for the 2005–06 fiscal year, the sum of the following two amounts:

(I) The difference between the following two amounts:

(Ia) The actual total amount of revenue that would have been deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund, including any amounts that would have been certified to the Controller by the auditor of the County of Ventura under subdivision (j) of Section 98.02, as that section read on January 1, 2004, for distribution under the law in effect on January 1, 2004, to the county, city and county, or city for the 2004–05 fiscal year if the fee otherwise due under the Vehicle License Fee Law (Part 5 (commencing with Section 10701) of Division 2) was 2 percent of the market value of a vehicle, as specified in Sections 10752 and 10752.1 as those sections read on January 1, 2004.

(Ib) The actual total amount of revenue that was distributed from the Motor Vehicle License Fee Account in the Transportation Tax Fund to the county, city and county, and each city in the county for the 2004–05 fiscal year under Section 11005, as that section read on the operative date of this section.

(II) The product of the following two amounts:

(IIa) The amount described in clause (i).

(IIb) The percentage change from the prior fiscal year to the current fiscal year in gross taxable assessed valuation within the jurisdiction of the entity, as reflected in the equalized assessment roll for those fiscal years. For the first fiscal year for which a change in a city's jurisdictional boundaries first applies, the percentage change in gross taxable assessed valuation from the prior fiscal year to the current fiscal year shall be calculated solely on the basis of the city's previous jurisdictional boundaries, without regard to the change in that city's jurisdictional boundaries. For each following fiscal year, the percentage change in gross taxable assessed valuation from the prior fiscal year to the current fiscal year shall be calculated on the basis of the city's current jurisdictional boundaries.

(ii) The amount described in clause (i) shall be adjusted as follows:

(I) If the amount described in subclause (I) of clause (i) for a particular city, county, or city and county is greater than the amount described in subparagraph (A) for that city, county, or city and county, the amount described in clause (i) shall be increased by an amount equal to this difference.

(II) If the amount described in subclause (I) of clause (i) for a particular city, county, or city and county is less than the amount described in subparagraph (A) for that city, county, or city and county, the amount described in clause (i) shall be decreased by an amount equal to this difference.

(C) For the 2006–07 fiscal year and for each fiscal year thereafter, the sum of the following two amounts:

(i) The vehicle license fee adjustment amount for the prior fiscal year, if Section 97.71 and clause (ii) of subparagraph (B) did not apply for that fiscal year, for that city, county, and city and county.

(ii) The product of the following two amounts:

(I) The amount described in clause (i).

(II) The percentage change from the prior fiscal year to the current fiscal year in gross taxable assessed valuation within the jurisdiction of the entity, as reflected in the equalized assessment roll for those fiscal years. For the first fiscal year for which a change in a city's jurisdictional boundaries first applies, the percentage change in gross taxable assessed valuation from the prior fiscal year to the current fiscal year shall be calculated solely on the basis of the city's previous jurisdictional

boundaries, without regard to the change in that city's jurisdictional boundaries. For each following fiscal year, the percentage change in gross taxable assessed valuation from the prior fiscal year to the current fiscal year shall be calculated on the basis of the city's current jurisdictional boundaries.

(2) The amount determined under paragraph (1) for the County of Orange for a particular fiscal year shall be reduced by the amount that was allocated, if any, to that county under Sections 11001.5 and 11005 for the service of indebtedness for that fiscal year.

(3) ''Countywide vehicle license fee adjustment amount'' means, for any fiscal year, the total sum of the amounts described in paragraph (1) for a county or city and county, and each city in the county.

(4) On or before June 30 of each fiscal year, the auditor shall report to the Controller the vehicle license fee adjustment amount for the county and each city in the county for that fiscal year.

(d) For the 2005–06 fiscal year and each fiscal year thereafter, the amounts determined under subdivision (a) of Section 96.1, or any successor to that provision, shall not reflect, for a preceding fiscal year, any portion of any allocation required by this section.

(e) For purposes of Section 15 of Article XI of the California Constitution, the allocations from a Vehicle License Fee Property Tax Compensation Fund constitute successor taxes that are otherwise required to be allocated to counties and cities, and as successor taxes, the obligation to make those transfers as required by this section shall not be extinguished nor disregarded in any manner that adversely affects the security of, or the ability of, a county or city to pay the principal and interest on any debts or obligations that were funded or secured by that city's or county's allocated share of motor vehicle license fee revenues.

(f) This section shall not be construed to do any of the following:

(1) Reduce any allocations of excess, additional, or remaining funds that would otherwise have been allocated to county superintendents of schools, cities, counties, and cities and counties pursuant to clause (i) of subparagraph (B) of paragraph (4) of subdivision (d) of Sections 97.2 and 97.3 or Article 4 (commencing with Section 98) had this section not been enacted. The allocations required by this section shall be adjusted to comply with this paragraph.

(2) Require an increased ad valorem property tax revenue allocation or increased tax increment allocation to a community redevelopment agency.

(3) Alter the manner in which ad valorem property tax revenue growth from fiscal year to fiscal year is otherwise determined or allocated in a county.

(4) Reduce ad valorem property tax revenue allocations required under Article 4 (commencing with Section 98).

(g) Tax exchange or revenue sharing agreements, entered into prior to the operative date of this section, between local agencies or between local agencies and nonlocal agencies are deemed to be modified to account for the reduced vehicle license fee revenues resulting from the act that added this section. These agreements are modified in that these reduced revenues are, in kind and in lieu thereof, replaced with ad valorem property tax revenue from a Vehicle License Fee Property Tax Compensation Fund or an Educational Revenue Augmentation Fund.

SEC. 22. Section 97.71 is added to the Revenue and Taxation Code, to read:

97.71. Notwithstanding any other provision of law, for each of the 2004–05 and 2005–06 fiscal years, all of the following apply:

(a) (1) The total amount of revenue required to be allocated to each county and each city and county under Section 97.70 shall be reduced by the dollar amount indicated as follows:

	Property Tax Reduction per County
Alameda	$ 14,993,115
Alpine	13,578
Amador	341,856
Butte	1,968,640
Calaveras	367,372
Colusa	227,244
Contra Costa	9,266,091
Del Norte	260,620
El Dorado	1,465,981
Fresno	7,778,611
Glenn	302,192
Humboldt	1,433,725
Imperial	1,499,081
Inyo	188,370
Kern	6,684,032
Kings	1,409,501
Lake	531,524
Lassen	317,119
Los Angeles	103,217,625
Madera	1,164,287
Marin	2,369,777
Mariposa	177,419
Mendocino	997,570

Merced	2,211,012
Modoc	119,325
Mono	92,964
Monterey	3,789,991
Napa	1,128,692
Nevada	503,547
Orange	27,730,861
Placer	2,219,818
Plumas	238,066
Riverside	14,161,003
Sacramento	12,232,737
San Benito	477,872
San Bernardino	16,361,855
San Diego	27,470,228
San Francisco	15,567,648
San Joaquin	6,075,964
San Luis Obispo	2,350,289
San Mateo	6,704,877
Santa Barbara	3,894,357
Santa Clara	17,155,293
Santa Cruz	2,433,423
Shasta	1,592,267
Sierra	37,051
Siskiyou	496,974
Solano	3,796,251
Sonoma	4,439,389
Stanislaus	4,516,707
Sutter	764,351
Tehama	618,393
Trinity	104,770
Tulare	3,781,964
Tuolumne	515,961
Ventura	7,085,556
Yolo	1,735,079
Yuba	620,137

(2) The total amount of reductions for all counties and cities and counties determined pursuant to this subdivision is three hundred fifty million dollars ($350,000,000) for the 2004–05 fiscal year and that same amount for the 2005–06 fiscal year.

(b) (1) (A) The total amount of revenue required to be allocated to each city and each city and county under Section 97.70 shall be reduced by the sum of the following three amounts:

(i) The product of the following two amounts:

(I) The percentage represented by the following fraction:

(Ia) The numerator is the total amount of money allocated to the city or city and county from the Motor Vehicle License Fee Account in the Transportation Tax Fund for the 2002–03 fiscal year, as reported in the 2002-03 edition of the State Controller's Cities Annual Report.

(Ib) The denominator is the total amount of money allocated among all cities and cities and counties from the Motor Vehicle License Fee Account in the Transportation Tax Fund for the 2002–03 fiscal year, as reported in the 2002–03 edition of the State Controller's Cities Annual Report.

(II) The product of the following two amounts:

(IIa) Thirty-three and one-third percent.

(IIb) Three hundred fifty million dollars ($350,000,000).

(ii) The product of the following two amounts:

(I) The percentage represented by the following fraction:

(Ia) The numerator is the total amount of money transmitted to the city or city and county under Section 7204 for the 2002–03 fiscal year, as reported in the 2002–03 edition of the State Controller's Cities Annual Report.

(Ib) The denominator is the total amount of money transmitted to all cities and cities and counties under Section 7204 for the 2002–03 fiscal year, as reported in the 2002–03 edition of the State Controller's Cities Annual Report.

(II) The product of the following two amounts:

(IIa) Thirty-three and one-third percent.

(IIb) Three hundred fifty million dollars ($350,000,000).

(iii) The product of the following two amounts:

(I) The percentage represented by the following fraction:

(Ia) The numerator is the total amount of ad valorem property tax revenue allocated to the city or city and county for the 2001–02 fiscal year, as reported in the 2002–03 edition of the State Controller's Cities Annual Report.

(Ib) The denominator is the total amount of ad valorem property tax revenue allocated among all cities and cities and counties for the 2002–03 fiscal year, as reported in the 2002–03 edition of the State Controller's Cities Annual Report.

(II) The product of the following two amounts:

(IIa) Thirty-three and one-third percent.

(IIb) Three hundred fifty million dollars ($350,000,000).

(B) Notwithstanding subparagraph (A), the reduction required by this paragraph for any city or city and county shall not be less than 2 percent, nor more than 4 percent, of the general revenues of the city or city and county, as reported in the 2001–02 edition of the State Controller's Cities Annual Report. If the amount determined for a city or city and county under subparagraph (A) exceeds 4 percent of the general revenues of the city or city and county, as reported in the 2001–02 edition of the State Controller's Cities Annual Report, the amount of that excess shall be allocated among the reductions required for all other cities and cities and counties in percentage shares corresponding to those reduction amounts.

(C) On or before September 15, 2004, the Controller shall notify the auditor of each county and city and county of the reductions required by this subdivision.

(2) The total amount of reductions for all cities and cities and counties determined pursuant to this subdivision shall be three hundred fifty million dollars ($350,000,000) for the 2004–05 fiscal year and that same amount for the 2005–06 fiscal year.

(3) (A) In lieu of a reduction under paragraph (1), a city may transmit to the county auditor for deposit in the county Educational Revenue Augmentation Fund an amount equal to that reduction. For the 2004–05 fiscal year, if the county auditor does not receive a payment under this paragraph from a city on or before October 1, 2004, the auditor shall make the reduction required by paragraph (1). For the 2005–06 fiscal year, if the county auditor does not receive a payment under this paragraph from a city on or before October 1, 2005, the auditor shall make the reduction required by paragraph (1).

(B) Notwithstanding any other provision of law, to make the transmittals authorized by this paragraph, a city may use any funds or revenues, the use of which is not restricted by federal law or the California Constitution.

(4) (A) Notwithstanding any other provision of law, a city that has established a reserve for subsidence contingencies may, for the 2004–05 and 2005–06 fiscal years only, retain interest earned on that reserve for the previous calendar year in an amount not to exceed the amount of the reduction for that city required by this subdivision.

(B) The Legislature finds and declares that the amounts retained by a city pursuant to subparagraph (A) are in excess of trust needs and are free from the public trust for navigation, commerce, fisheries, and any other trust uses and restrictions.

(C) A city that has retained an amount under subparagraph (A) shall, beginning with the 2006–07 fiscal year, repay to the reserve for subsidence contingencies that amount so retained. The repayment shall be made in annual increments, which increments shall not be less than five hundred thousand dollars ($500,000), until the amount retained by

the city has been repaid. Those amounts repaid to the reserve for subsidence contingencies are subject to the public trust and shall be used only for the purposes prescribed by law for the reserve.

(c) That amount of revenue that is not allocated to a county, city and county, or a city as a result of subdivisions (a) and (b), and that amount that is received by the county auditor under paragraph (3) of subdivision (b), shall be deposited in the county Educational Revenue Augmentation Fund and shall be allocated as specified in subdivision (d) of Section 97.3.

(d) For the 2005–06 fiscal year and each fiscal year thereafter, the amounts determined under subdivision (a) of Section 96.1, or any successor to that provision, shall not reflect, for a preceding fiscal year, any portion of any allocation required by this section.

SEC. 23. Section 97.72 is added to the Revenue and Taxation Code, to read:

97.72. Notwithstanding any other provision of law, for each of the 2004–05 and 2005–06 fiscal years, all of the following apply:

(a) (1) (A) (i) Except as otherwise provided in clauses (ii) and (iii), the total amount of ad valorem property tax revenue, other than these revenues that are pledged to debt service, deemed allocated for the prior fiscal year to each enterprise special district shall be reduced by the lesser of the following:

(I) Forty percent.

(II) An amount equal to 10 percent of that district's total revenues, from whatever source.

(ii) The total amount of ad valorem property tax revenue deemed allocated for the prior fiscal year to each enterprise special district that is a transit district shall be reduced by 3 percent.

(iii) The total amount of ad valorem property tax revenue deemed allocated for the prior fiscal year to an enterprise special district that also performs, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report, nonenterprise functions other than fire protection or police protection shall be reduced as follows:

(I) That amount allocated to the district's enterprise functions, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report, shall be reduced by 40 percent.

(II) That amount allocated to the district's nonenterprise functions, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report, shall be reduced by 10 percent.

(B) If an enterprise special district is located in more than one county, the auditor of each county in which that enterprise special district is located shall implement that portion of the total reduction, required by subparagraph (A) with respect to that district, determined by the ratio of the amount of ad valorem property tax revenue allocated to that district

from the county to the total amount of ad valorem property tax revenue allocated to that district from all counties.

(2) (A) The Controller shall, on or before November 12, 2004, and on or before November 12, 2005, notify the auditor of each county and city and county of the amount of the ad valorem property tax revenue reduction required by paragraph (1) for each enterprise special district in the county. The Controller shall certify that the calculation of the ad valorem property tax revenue reduction for each enterprise special district within each county is accurate and correct, and submit this information to the Director of Finance.

(B) The Director of Finance shall determine whether the amount of ad valorem property tax revenue reductions under this section and Section 97.73, as certified by the Controller, is equal to the amount that would be required to be allocated to the Educational Revenue Augmentation Fund as a result of a three hundred fifty million dollar ($350,000,000) shift of ad valorem property tax revenues under those sections for each of the 2004–05 and 2005–06 fiscal years. If, for either fiscal year, the total of the amount of these reductions is less than the amount described in the preceding sentence, the total amount of ad valorem property tax revenue allocated to each enterprise special district, other than an enterprise special district that is a transit district, shall be reduced by that district's proportionate share of the difference, but not to exceed an amount equal to 10 percent of that district's revenue from whatever source. The Director of Finance shall notify each county auditor of any allocation reduction required by this subparagraph.

(b) That amount of ad valorem property tax revenue that is not allocated to an enterprise special district as a result of subdivision (a) shall instead be deposited in the county Educational Revenue Augmentation Fund and shall be allocated as specified in subdivision (d) of Section 97.3.

(c) For purposes of this section, all of the following apply:

(1) ''Enterprise special district'' means a special district that performs, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report, an enterprise function. ''Enterprise special district'' does not include a fire protection district that was formed under the Shade Tree Law of 1909 set forth in Article 2 (commencing with Section 25620) of Chapter 7 of Division 2 of Title 3 of the Government Code, a local health care district as described in Division 23 (commencing with Section 32000) of the Health and Safety Code, or a qualified special district as defined in Section 97.34.

(2) With respect to an enterprise special district that also performs, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report, a police protection nonenterprise function with certified peace officers, as described in Chapter 4.5 (commencing with

Section 830) of Title 3 of Part 2 of the Penal Code, or a fire protection nonenterprise function, ''the total amount of ad valorem property tax revenue allocated in the prior fiscal year'' does not include any ad valorem property tax revenue that was allocated to that district for fire protection or police protection nonenterprise functions, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report.

(3) For purposes of this section, ''revenues that are pledged to debt service'' includes only those amounts required as the sole source of repayment to pay debt service costs in the 2002–03 fiscal year on debt instruments issued by an enterprise special district for the acquisition of fixed assets. For purposes of this paragraph, ''fixed assets'' means land, buildings, equipment, and improvements, including improvements to buildings.

SEC. 24. Section 97.73 is added to the Revenue and Taxation Code, to read:

97.73. Notwithstanding any other provision of law, for each of the 2004–05 and 2005–06 fiscal years, all of the following apply:

(a) (1) (A) The total amount of ad valorem property tax revenue, other than those revenues that are pledged to debt service, deemed allocated for the prior fiscal year to each nonenterprise special district shall be reduced by 10 percent.

(B) If a nonenterprise special district is located in more than one county, the auditor of each county in which that nonenterprise special district is located shall implement that portion of the total reduction, required by subparagraph (A) with respect to that district, determined by the ratio of the amount of ad valorem property tax revenue allocated to that district from the county to the total amount of ad valorem property tax revenue allocated to that district from all counties.

(2) The Controller shall, on or before November 12, 2004, and on or before November 12, 2005, notify the auditor of each county and city and county of the amount of the ad valorem property tax revenue reduction required by paragraph (1) for each nonenterprise special district in the county. The Controller shall certify that the calculation of the ad valorem property tax revenue reduction for each nonenterprise special district within each county is accurate and correct, and submit this information to the Director of Finance.

(b) That amount of ad valorem property tax revenue that is not allocated to a nonenterprise special district as a result of subdivision (a) shall instead be deposited in the county Educational Revenue Augmentation Fund and shall be allocated as specified in subdivision (d) of Section 97.3.

(c) For purposes of this section, all of the following apply:

(1) (A) ''Nonenterprise special district'' means a special district that engages solely, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report, in nonenterprise functions, and a qualified special district as defined in Section 97.34.

(B) Notwithstanding any other provision of law, ''nonenterprise special district'' does not include any of the following:

(i) A fire protection district that was formed under the Shade Tree Law of 1909 set forth in Article 2 (commencing with Section 25620) of Chapter 7 of Division 2 of Title 3 of the Government Code.

(ii) A police protection district formed pursuant to Part 1 (commencing with Section 20000) of Division 14 of the Health and Safety Code.

(iii) A fire protection district formed under the Fire Protection District Law of 1987 (Part 2.7 (commencing with Section 13800) of Division 12 of the Health and Safety Code) or a fire protection district formed under the Fire Protection District Law of 1961, or any of its statutory predecessors, and that existed on January 1, 1988.

(iv) Any library special district, including, but not limited to, the following:

(I) A county free library system established pursuant to Article 1 (commencing with Section 19100) of Chapter 6 of Part 11 of Division 1 of Title 1 of the Education Code.

(II) A unified school district and union school district public library district established pursuant to Chapter 3 (commencing with Section 18300) of Part 11 of Division 1 of Title 1 of the Education Code.

(III) A library district established pursuant to Chapter 8 (commencing with Section 19400) of Part 11 of Division 1 of Title 1 of the Education Code.

(IV) A library district in unincorporated towns and villages established pursuant to Chapter 9 (commencing with Section 19600) of Part 11 of Division 1 of Title 1 of the Education Code.

(v) A memorial district formed pursuant to Article 1 (commencing with Section 1170) of Chapter 1 of Part 2 of Division 6 of the Military and Veterans Code.

(vi) A mosquito abatement district or a vector control district formed pursuant to Chapter 1 (commencing with Section 2000) of Division 3 of the Health and Safety Code, or any predecessor to that law.

(2) With respect to a nonenterprise special district that performs, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report, nonenterprise functions and police protection services with certified peace officers, as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or nonenterprise functions and fire protection services, ''the total amount of ad valorem property tax revenue allocated in the prior fiscal

year'' does not include any ad valorem property tax revenue that was allocated by that district for fire protection or police protection nonenterprise functions, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report.

(3) With respect to a nonenterprise special district formed pursuant to Article 3 (commencing with Section 5500) of Chapter 3 of Division 5 of the Public Resources Code that performs, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report, nonenterprise functions and police protection services with certified peace officers, as described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or nonenterprise functions and fire protection services, ''the total amount of ad valorem property tax allocated in the prior fiscal year'' does not include net expenditures by that district for fire protection or police protection nonenterprise functions, as reported in the 2000–01 edition of the State Controller's Special Districts Annual Report.

(4) For purposes of this section, ''revenues that are pledged to debt service'' includes only those amounts required as the sole source of repayment to pay debt service costs in the 2002–03 fiscal year on debt instruments issued by a nonenterprise special district for the acquisition of fixed assets. For purposes of this paragraph, ''fixed assets'' means land, buildings, equipment, and improvements, including improvements to buildings.

SEC. 25. Section 97.74 is added to the Revenue and Taxation Code, to read:

97.74. Notwithstanding any other provision of law, for purposes of ad valorem property tax revenue allocations for the 2006–07 fiscal year, the total amount of ad valorem property tax revenue deemed allocated to each enterprise special district and each nonenterprise special district for the 2005–06 fiscal year shall be increased by an amount equal to the total amount of the reductions in the amount of ad valorem property tax revenue allocated to the entity as a result of Sections 97.72 and 97.73, including any portion of the annual tax increment that was not allocated to that entity for the 2004–05 and 2005–06 fiscal years as a result of the reductions required by those sections.

SEC. 26. Section 97.75 is added to the Revenue and Taxation Code, to read:

97.75. Notwithstanding any other provision of law, for the 2004–05 and 2005–06 fiscal years, a county shall not impose a fee, charge, or other levy on a city, nor reduce a city's allocation of ad valorem property tax revenue, in reimbursement for the services performed by the county under Sections 97.68 and 97.70. For the 2006–07 fiscal year and each fiscal year thereafter, a county may impose a fee, charge, or other levy

on a city for these services, but the fee, charge, or other levy shall not exceed the actual cost of providing these services.

SEC. 27. Section 97.76 is added to the Revenue and Taxation Code, to read:

97.76. (a) On or before September 1, 2004, the Controller shall determine the countywide vehicle license fee adjustment amount, as defined in Section 97.70, for the 2004–05 fiscal year and the vehicle license fee adjustment amount, as defined in Section 97.70, for each city, county, and city and county for the 2004–05 fiscal year, and notify the county auditor of these amounts.

(b) On or before September 1, 2005, the Controller shall determine the amount specified in clause (i) of subparagraph (B) of paragraph (1) of subdivision (c) of Section 97.70 for each city, county, and city and county and notify the county auditor of these amounts.

SEC. 28. Section 97.77 is added to the Revenue and Taxation Code, to read:

97.77. An enterprise special district and a nonenterprise special district shall not pledge, on or after July 1, 2004, and before June 30, 2006, through a bond covenant to pay debt service costs on debt instruments issued by the district, any ad valorem property tax revenue that would otherwise be dedicated to the reduction required by Sections 97.72 and 97.73.

SEC. 29. Section 98.02 of the Revenue and Taxation Code is amended to read:

98.02. (a) In the County of Ventura, the computations made pursuant to Section 96.1 or its predecessor section, for the 1989–90 fiscal year and each fiscal year thereafter, shall be modified as follows:

With respect to tax rate areas, except excluded tax rate areas, within the boundaries of a qualifying city, there shall be excluded from the aggregate amount of ''property tax revenue allocated pursuant to this chapter to local agencies, other than for a qualifying city, in the prior fiscal year,'' an amount equal to the sum of the amounts calculated pursuant to the TEA formula.

(b) (1) Each qualifying city shall, for the 1989–90 fiscal year and each fiscal year thereafter, be allocated by the auditor an amount determined pursuant to the TEA formula.

(2) For each qualifying city, the auditor shall, for the 1989–90 fiscal year and each fiscal year thereafter, distribute the amount determined pursuant to the TEA formula to all tax rate areas, except excluded tax rate areas, within that city in proportion to each tax rate area's share of the total assessed value in the city for the applicable fiscal year, and the amount so determined shall be subtracted from the county's proportionate share of the property tax revenue for that fiscal year within those tax rate areas.

(3) After making the allocations pursuant to paragraphs (1) and (2), but before making the calculations pursuant to Section 96.5 or its predecessor section, the auditor shall, for all tax rate areas, except excluded tax rate areas, in the qualifying city, calculate the proportionate share of property tax revenue allocated pursuant to this section and Section 96.1, or their predecessor sections, in the 1989–90 fiscal year and each fiscal year thereafter to each jurisdiction in the tax rate area.

(4) In lieu of making the allocations of annual tax increment pursuant to subdivision (e) of Section 96.5 or its predecessor section, the auditor shall for the 1989–90 fiscal year and each fiscal year thereafter, allocate the amount of property tax revenue determined pursuant to subdivision (d) of Section 98 to jurisdictions in the tax rate area, except an excluded tax rate area, using the proportionate shares derived pursuant to paragraph (3).

(5) For purposes of the calculations made pursuant to Section 96.1 or its predecessor section, in the 1990–91 fiscal year and each fiscal year thereafter, the amounts that would have been allocated to all tax rate areas, except excluded tax rate areas, of qualifying cities pursuant to this subdivision shall be deemed to be the ''amount of property tax revenue allocated to those tax rate areas in the prior fiscal year.''

(c) ''TEA formula'' means the Tax Equity Allocation formula, and shall be calculated by the auditor for each qualifying city as follows:

(1) For the 1988–89 fiscal year and each fiscal year thereafter, the auditor shall determine the total amount of property tax revenue to be allocated to all jurisdictions in all tax rate areas, except excluded tax rate areas, within the qualifying city, before the allocation and payment of funds in that fiscal year to a community redevelopment agency within the qualifying city, as provided in subdivision (b) of Section 33670 of the Health and Safety Code.

(2) The auditor shall determine the amount of funds allocated in each fiscal year to those tax rate areas, except excluded tax rate areas, within a community redevelopment agency in accordance with subdivision (b) of Section 33670 of the Health and Safety Code.

(3) (A) The auditor shall determine the total amount of funds paid in each fiscal year by a community redevelopment agency within the city to jurisdictions other than the city pursuant to subdivision (b) of Section 33401 and Section 33676 of the Health and Safety Code, and the cost to the redevelopment agency of any land or facilities transferred and any amounts paid to jurisdictions other than the city to assist in the construction or reconstruction of facilities pursuant to an agreement entered into under Section 33401 or 33445.5 of the Health and Safety Code.

(B) Of the total amount determined in subparagraph (A), the auditor shall compute a proportionate amount to be attributed to all tax rate

areas, except excluded tax rate areas, within the community redevelopment agency. That proportionate amount shall be equal to that proportion which the amount determined in paragraph (2) in each fiscal year bears to the total amount of funds allocated in each fiscal year to a community redevelopment agency in accordance with subdivision (b) of Section 33670 of the Health and Safety Code.

(4) The auditor shall subtract the amount determined in subparagraph (B) of paragraph (3) from the amount determined in paragraph (2).

(5) The auditor shall subtract the amount determined in paragraph (4) from the amount determined in paragraph (1).

(6) The amount computed in paragraph (5) shall be multiplied by the following percentages in order to determine the TEA formula amount to be distributed to the qualifying city in each fiscal year:

(A) For the first fiscal year in which the qualifying city receives a distribution pursuant to this section, 1 percent of the amount determined in paragraph (5).

(B) For the second fiscal year in which the qualifying city receives a distribution pursuant to this section, 2 percent of the amount determined in paragraph (5).

(C) For the third fiscal year in which the qualifying city receives a distribution pursuant to this section, 3 percent of the amount determined in paragraph (5).

(D) For the fourth fiscal year and each fiscal year thereafter in which the qualifying city receives a distribution pursuant to this section, 4 percent of the amount determined in paragraph (5).

(d) For purposes of this section, ''excluded tax rate area'' means either of the following:

(1) Any tax rate area included in territory annexed by the qualifying city and allocated a prescribed percentage of property tax revenue pursuant to an existing agreement between the qualifying city and the county.

(2) Any tax rate area described in paragraph (1) that was detached from the county library district and that is also allocated an additional prescribed percentage of property tax revenue pursuant to an existing agreement between the qualifying city and the county.

(e) (1) All existing agreements between the qualifying city and the county covering the allocation of property tax revenues to tax rate areas described in subdivision (d) shall remain in force.

(2) All existing agreements between the qualifying city and the county covering the allocation of property tax revenues to tax rate areas that were detached from the county library district but are not included in territory that was annexed by the qualifying city shall remain in force.

(3) All allocations to those tax rate areas described in subdivision (d), including allocations of annual tax increments, made pursuant to the

existing agreements between the qualifying city and the county shall be governed by subdivision (a) of Section 96.1 and Section 96.5.

(4) All allocations to those tax rate areas described in paragraph (2), including allocations of annual tax increments, made pursuant to the existing agreements between the qualifying city and the county shall be governed by subdivision (a) of Section 96.1 and Section 96.5. However, the tax rate areas referred to in this paragraph shall also be distributed an amount of property tax revenue determined pursuant to the TEA formula that is over and above the amount allocated as provided in the preceding sentence.

(f) ''Qualifying city'' means any city that incorporated prior to June 5, 1987, and had an amount of property tax revenue allocated to it pursuant to subdivision (a) of Section 96.1 or its predecessor section in the 1988–89 fiscal year that is less than 4 percent of the amount of property tax revenue computed as follows:

(1) The auditor shall determine the total amount of property tax revenue allocated to all tax rate areas, except excluded tax rate areas, in the city in the 1988–89 fiscal year.

(2) The auditor shall subtract the amount in the 1988–89 fiscal year determined in paragraph (3) of subdivision (c) from the amount determined in paragraph (2) of subdivision (c).

(3) The auditor shall subtract the amount determined in paragraph (2) from the amount of property tax revenue in paragraph (1) of subdivision (c).

(4) The auditor shall divide the amount of property tax revenue determined in paragraph (1) of this subdivision by the amount of property tax revenue determined in paragraph (3) of this subdivision.

(5) If the quotient determined in paragraph (4) of this subdivision is less than 0.04, the city is a qualifying city. If the quotient determined in that paragraph is equal to or greater than 0.04, the city is not a qualifying city.

(g) The auditor may assess each qualifying city its proportional share of the actual costs of making the calculations required by this section, and may deduct that assessment from the amount allocated pursuant to subdivision (b). For purposes of this subdivision, a qualifying city's proportional share of the auditor's actual costs shall not exceed the proportion it receives of the total amounts excluded in the county pursuant to subdivision (a).

(h) (1) Notwithstanding subdivision (b), except as otherwise provided in paragraph (2), in any fiscal year in which a qualifying city receives a distribution pursuant to this section, the auditor shall reduce the actual amount distributed to the qualifying city by the amount of revenue not collected by the qualifying city in the first fiscal year following the city's reduction after January 1, 1988, of the tax rate or tax

base of any locally imposed general or special tax. The amount so computed by the auditor shall constitute a reduction in the amount of property tax revenue distributed to the qualifying city pursuant to this section in each succeeding fiscal year. That amount shall be aggregated with any additional amount computed pursuant to this paragraph as the result of the city's reduction in any subsequent year of the tax rate or tax base of the same or any other locally imposed general or special tax.

(2) No reduction shall be made pursuant to paragraph (1) in the case in which a local tax is reduced or eliminated as a result of either a court decision or the approval or rejection of a ballot measure by the voters.

(i) If the auditor determines that the amount to be distributed to a qualifying city pursuant to subdivision (b), as modified by subdivisions (g) and (h), would result in a qualifying city having proceeds of taxes in excess of its appropriation limit, the auditor shall reduce the amount, on a dollar-for-dollar basis, by the amount that exceeds the city's appropriations limit.

(j) Notwithstanding any other provision of this section, no qualifying city shall be distributed an amount pursuant to this section that is less than the amount the city would have been allocated without the application of the TEA formula.

(k) (1) Notwithstanding any other provision of this section, commencing with the 1994–95 fiscal year, the auditor shall not reduce the amount distributed to a qualifying city under this section by reason of that city becoming the successor agency to a special district that is dissolved, merged with that city, or becomes a subsidiary district of that city, on or after July 1, 1994.

(2) Notwithstanding any other provision of this section, in no event may the auditor reduce the amount of ad valorem property tax revenue otherwise allocated to a qualifying city pursuant to this section on the basis of any additional ad valorem property tax revenues received by that city pursuant to a services for revenue agreement. For purposes of this subdivision, a ''services for revenue agreement'' means any agreement between a qualifying city and the county in which it is located, entered into by joint resolution of that city and that county, under which additional service responsibilities are exchanged in consideration for additional property tax revenues.

(*l*) The amount not distributed as a result of this section to the tax rate areas, except excluded tax rate areas, in each qualifying city shall be allocated by the auditor to the county.

SEC. 29.5. Section 7203.1 of the Revenue and Taxation Code is amended to read:

7203.1. (a) Notwithstanding any other provision of law, during the revenue exchange period only, the authority of a county or a city under this part to impose a tax rate as specified in an ordinance adopted

pursuant to Sections 7202 and 7203 is suspended, and the tax rate to be applied instead during that period under any ordinance as so adopted is the rate specified in that ordinance on January 1, 2004, reduced by one-quarter of 1 percent.

(b) For purposes of this section, ''revenue exchange period'' means the period on and after July 1, 2004, and before the first day of the first calendar quarter commencing more than 90 days following a notification to the board by the Director of Finance pursuant to subdivision (b) of Section 99006 of the Government Code.

(c) Subdivision (a) is a self-executing provision that operates without regard to any decision or act on the part of any local government. A change in a local general tax rate resulting from either the rate limitations applied by subdivision (a) or the end of the revenue exchange period is not subject to voter approval under either statute or Article XIII C of the California Constitution.

(d) Existing tax exchange or revenue sharing agreements, entered into prior to the operative date of this section, between local agencies or between local agencies and nonlocal agencies shall be deemed to be temporarily modified to account for the reduction in sales and use tax revenues resulting from this section, with those reduced revenues to be replaced as may otherwise be provided by law.

SEC. 30. Section 10752 of the Revenue and Taxation Code is amended to read:

10752. The annual amount of the license fee for any vehicle, other than a trailer or semitrailer, as described in subdivision (a) of Section 5014.1 of the Vehicle Code, or a trailer coach that is required to be moved under permit as authorized in Section 35790 of the Vehicle Code, shall be a sum equal to 2 percent, and on and after January 1, 2005, 0.65 percent, of the market value of the vehicle as determined by the department.

SEC. 31. Section 10752.1 of the Revenue and Taxation Code is amended to read:

10752.1. The annual amount of the license fee for a trailer coach which is required to be moved under permit as authorized in Section 35790 of the Vehicle Code shall be a sum equal to 2 percent, and on and after January 1, 2005, 0.65 percent, of the market value of the vehicle as determined by the department.

SEC. 32. Section 10753.2 of the Revenue and Taxation Code is amended to read:

10753.2. (a) After determining the cost price to the purchaser, as provided in this article, the department shall classify or reclassify every vehicle, other than a trailer or semitrailer, as described in subdivision (a) of Section 5014.1 of the Vehicle Code, in its proper class according to the classification plan set forth in this section.

(b) For the purpose of this part, a classification plan is established consisting of the following classes: a class from zero dollars ($0) to and including forty-nine dollars and ninety-nine cents ($49.99); a class from fifty dollars ($50) to and including one hundred ninety-nine dollars and ninety-nine cents ($199.99); and thereafter a series of classes successively set up in brackets having a spread of two hundred dollars ($200), consisting of a number of classes that will permit classification of all vehicles.

(c) The market value of a vehicle, other than a trailer or semitrailer, as described in subdivision (a) of Section 5014.1 of the Vehicle Code, for each registration year, starting with the year the vehicle was first sold to a consumer as a new vehicle, or the year the vehicle was first purchased or assembled by the person applying for original registration in this state, or the year the vehicle was sold to the current registered owner as a used vehicle, shall be as follows: for the first year, 100 percent of a sum equal to the middle point between the extremes of its class as established in subdivision (b); for the second year, 90 percent of that sum; for the third year, 80 percent of that sum; for the fourth year, 70 percent of that sum; for the fifth year, 60 percent of that sum; for the sixth year, 50 percent of that sum; for the seventh year, 40 percent of that sum; for the eighth year, 30 percent of that sum; for the ninth year, 25 percent of that sum; and for the 10th year, 20 percent of that sum; and for the 11th year and each succeeding year, 15 percent of that sum; provided, however, that the minimum tax shall be the sum of one dollar ($1). Notwithstanding this subdivision, the market value of a trailer coach first sold on and after January 1, 1966, that is required to be moved under permit as authorized in Section 35790 of the Vehicle Code, shall be determined by the schedule in Section 10753.3.

(d) Notwithstanding any other provision of law, this section is operative for the period beginning on and after the effective date of the act amending this subdivision.

SEC. 33. Section 10753.8 of the Revenue and Taxation Code is repealed.

SEC. 34. Section 10754 of the Revenue and Taxation Code is amended to read:

10754. (a) Notwithstanding any other provision of law, the total amount of the vehicle license fee otherwise required with respect to a vehicle shall be offset in accordance with those provisions set forth below that are operative pursuant to subdivision (b):

(1) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is

operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to 25 percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction of funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(2) (A) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to 35 percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(B) Upon proper payment of license fees to the Department of Motor Vehicles, the amount of the offset for each vehicle shall be transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund, and into the Local Revenue Fund, pursuant to Section 11000 or Section 11000.1, as applicable.

(C) During any period in which insufficient moneys are available to be transferred from the General Fund to fully fund the offsets required by subparagraph (A), within 90 days of a reduction of funding, the department shall reduce the amount of each offset computed pursuant to that subparagraph by multiplying that amount by the ratio of the amount of moneys actually available to be transferred from the General Fund to pay for those offsets to the amount of moneys that is necessary to fully fund those offsets.

(3) For any initial or original registration of any vehicle, never before registered in this state, for which the final due date for the license fee is on or after January 1 of any calendar year for which this paragraph is operative, and for any renewal of registration with an expiration date on or after January 1 of any calendar year for which this paragraph is

operative, the department shall offset the total amount of fees otherwise due at the time of registration of that vehicle by an amount equal to $67^1/_2$ percent of the amount computed pursuant to Section 10752 or 10752.1, or Section 18115 of the Health and Safety Code.

(b) The offset provisions set forth in subdivision (a) shall be operative as provided by the following:

(1) Paragraph (1) of subdivision (a) shall be operative for vehicle license fees with a final due date in the calendar year beginning on January 1, 1999.

(2) Paragraph (2) of subdivision (a) shall be operative for vehicle license fees with a final due date on or after January 1, 2000, and before July 1, 2001.

(3) Paragraph (3) of subdivision (a) shall be operative for vehicle license fees with a final due date on or after July 1, 2001, and before January 1, 2005.

(c) (1) For purposes of this section, ''department'' means the Department of Motor Vehicles with respect to a vehicle license fee offset for a vehicle subject to registration under the Vehicle Code, and the Department of Housing and Community Development with respect to a vehicle license fee offset for a manufactured home, mobilehome, or commercial coach described in Section 18115 of the Health and Safety Code.

(2) For purposes of this section, the ''final due date'' for a license fee is the last date upon which that fee may be paid without being delinquent.

(d) This section is repealed on January 1, 2005.

SEC. 35. Section 10754.11 is added to the Revenue and Taxation Code, to read:

10754.11. (a) (1) On August 15, 2006, the Controller shall transfer from the General Fund to the Gap Repayment Fund, which is hereby created in the State Treasury, an amount equal to the total amount of offsets that were applied to new vehicle registrations before October 1, 2003, and that were applied to vehicle license fees with a due date before October 1, 2003, that were not transferred into the Motor Vehicle License Fee Account in the Transportation Tax Fund and the Local Revenue Fund due to the operation of Item 9100-102-0001 of Section 2.00 of the Budget Act of 2003. The amount of this transfer shall include transfers not made for offsets applied on or after June 20, 2003, transfers required under clause (iii) of subparagraph (B) of paragraph (2) of subdivision (a) of Section 11000 as that section read on June 30, 2004, and the additional amounts required to be transferred to the Local Revenue Fund pursuant to paragraph (2) of subdivision (a) of Section 11001.5 and paragraph (2) of subdivision (d) of that same section, less any amount that was appropriated under clause (iii) of subparagraph (D)

of paragraph (3) of subdivision (a) of Section 10754, as that section read on June 30, 2004.

(2) The Controller may make the transfer required by paragraph (1) prior to August 15, 2006, if that transfer is authorized by the Legislature.

(b) The Controller shall allocate moneys in the Gap Repayment Fund to cities, counties, and cities and counties in accordance with the provisions of subdivisions (c) and (d) of Section 11005, as that section read on January 1, 2004.

(c) This section is operative for the period beginning on and after July 1, 2004.

SEC. 36. Section 11000 of the Revenue and Taxation Code is repealed.

SEC. 37. Section 11001.5 of the Revenue and Taxation Code is amended to read:

11001.5. (a) (1) Notwithstanding Section 11001, and except as provided in paragraph (2) and in subdivisions (b) and (d), 24.33 percent, and on and after July 1, 2004, 74.9 percent, of the moneys collected by the department under this part shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code. All other moneys collected by the department under this part shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and first allocated to the County of Orange as necessary for the service of indebtedness as pledged by Sections 25350.6 and 53585.1 of the Government Code and in accordance with written instructions provided by the Controller under Sections 25350.7, 25350.9, and 53585.1 of the Government Code, and the balance shall be allocated to each city and city and county as otherwise provided by law.

(2) For the period beginning on and after July 1, 2003, and ending on February 29, 2004, the Controller shall deposit an amount equal to 28.07 percent of the moneys collected by the department under this part in the State Treasury to the credit of the Local Revenue Fund. All other moneys collected by the department under this part shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(b) Notwithstanding Section 11001, net funds collected as a result of procedures developed for greater compliance with vehicle license fee laws in order to increase the amount of vehicle license fee collections shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Vehicle License Fee Collection Account of the Local Revenue Fund as established pursuant to Section 17600 of the Welfare and Institutions Code. All revenues in

excess of fourteen million dollars ($14,000,000) in any fiscal year shall be allocated to cities and cities and counties as specified in subdivisions (c) and (d) of Section 11005.

(c) Notwithstanding Section 11001, 25.72 percent of the moneys collected by the department on or after August 1, 1991, and before August 1, 1992, under this part shall be reported monthly to the Controller, and at the same time, deposited in the State Treasury to the credit of the Local Revenue Fund, as established pursuant to Section 17600 of the Welfare and Institutions Code. All other moneys collected by the department under this part shall continue to be deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and allocated to each city, county, and city and county as otherwise provided by law.

(d) Notwithstanding any other provision of law, both of the following apply:

(1) This section is operative for the period beginning on and after March 1, 2004.

(2) It is the intent of the Legislature that the total amount deposited by the Controller in the State Treasury to the credit of the Local Revenue Fund for the 2003–04 fiscal year be equal to the total amount that would have been deposited to the credit of the Local Revenue Fund if paragraph (1) of subdivision (a) was applied during that entire fiscal year. The department shall calculate and notify the Controller of the adjustment amounts that are required by this paragraph to be deposited in the State Treasury to the credit of the Local Revenue Fund. The amounts deposited in the State Treasury to the credit of the Local Revenue Fund pursuant to this paragraph shall be deemed to have been deposited during the 2003–04 fiscal year.

(e) This section does not amend nor is it intended to amend or impair Section 25350 and following of, Section 53584 and following of, the Government Code, or any other statute dealing with the interception of funds.

SEC. 38. Section 11003 of the Revenue and Taxation Code is amended to read:

11003. The amount appropriated by the Legislature for the use of the Department of Motor Vehicles and the Franchise Tax Board for the enforcement of this part shall be transferred from the Motor Vehicle License Fee Account in the Transportation Tax Fund to the Motor Vehicle Account in the State Transportation Fund. That amount shall be determined so that the appropriate costs for registration and motor vehicle license fee activities are apportioned between the recipients of revenues in proportion to the revenues that would have been received by those recipients if the total fee imposed under this part was 2 percent of the market value of a vehicle.

SEC. 39. Section 11005 of the Revenue and Taxation Code is repealed.

SEC. 40. Section 11005 is added to the Revenue and Taxation Code, to read:

11005. After payment of refunds therefrom and after making the deductions authorized by Section 11003 and reserving the amount determined necessary by the Pooled Money Investment Board to meet the transfers ordered or proposed to be ordered pursuant to Section 16310 of the Government Code, commencing with the 2004–05 fiscal year, the balance of all motor vehicle license fees, net of those amounts required to be allocated to the County of Orange for service of indebtedness, and any other money appropriated by law for expenditure pursuant to this section and deposited to the credit of the Motor Vehicle License Fee Account in the Transportation Tax Fund and remaining unexpended therein at the close of business on the last day of the calendar month, shall be allocated by the Controller by the 10th day of the following month in accordance with the following:

(a) First, to each city, the population of which is determined under Section 11005.3 on the operative date of this section, in an amount equal to the additional amount of vehicle license fee revenue that would be allocated to that city under Section 11005, as it read on January 1, 2004, as a result of that city's population being determined under Section 11005.3.

(b) Second, to the cities and cities and counties of this state in the proportion that the population of each city or city and county bears to the total population of all cities and cities and counties in this state, as determined by the population research unit of the Department of Finance. For the purpose of this subdivision, the population of each city or city and county is that determined by the last federal decennial or special census, or a subsequent census validated by the demographic research unit or subsequent estimate prepared pursuant to Section 2107.2 of the Streets and Highways Code.

SEC. 41. Section 11005.7 of the Revenue and Taxation Code is repealed.

SEC. 42. Section 42205 of the Vehicle Code is amended to read:

42205. (a) Notwithstanding Chapter 3 (commencing with Section 42270), the department shall file, at least monthly with the Controller, a report of money received by the department pursuant to Section 9400 for the previous month and shall, at the same time, remit all money so reported to the Treasurer. On order of the Controller, the Treasurer shall deposit all money so remitted into the State Highway Account in the State Transportation Fund.

(b) The Legislature shall appropriate from the State Highway Account in the State Transportation Fund to the department and the

Franchise Tax Board amounts equal to the costs incurred by each in performing their duties pursuant to Article 3 (commencing with Section 9400) of Chapter 6 of Division 3. The applicable amounts shall be determined so that the appropriate costs for registration and weight fee collection activities are appropriated between the recipients of revenues in proportion to the revenues that would have been received individually by those recipients if the total fee imposed under the Vehicle License Fee Law (Part 5 (commencing with Section 10701) of Division 2 of the Revenue and Taxation Code) was 2 percent of the market value of a vehicle. The remainder of the funds collected under Section 9400 and deposited in the account may be appropriated to the Department of Transportation, the Department of the California Highway Patrol, and the Department of Motor Vehicles for the purposes authorized under Section 2 of Article XIX of the California Constitution.

SEC. 43. Section 210 of Chapter 89 of the Statutes of 1991 is repealed.

SEC. 44. Section 40 of Chapter 91 of the Statutes of 1991 is amended to read:

Sec. 40. In the event of a final judicial determination by a California court of appellate jurisdiction that the revenues collected pursuant to Sections 6051.2 and 6201.2 of the Revenue and Taxation Code are General Fund proceeds of taxes that may be appropriated pursuant to Article XIII B of the California Constitution or allocated local proceeds of taxes as used in paragraph (2) of subdivision (b) of Article XVI of the California Constitution, then Sections 6051.2 and 6201.2 of the Revenue and Taxation Code shall cease to be operative on the first day of the first month of the calendar quarter following notification to the State Board of Equalization by the Department of Finance of the determination.

SEC. 45. Section 29 of Chapter 100 of the Statutes of 1993 is repealed.

SEC. 46. This measure provides ad valorem property tax revenues in lieu of moneys that were required to be allocated to cities, counties, and cities and counties for the 2004–05 fiscal year and each fiscal year thereafter under the Vehicle License Fee Law, as that law read before the effective date of this act. Because this act will take effect after the beginning of the 2004–05 fiscal year, these entities will continue to receive certain moneys under the Vehicle License Fee Law for a portion of the 2004–05 fiscal year.

Therefore, it is the intent of the Legislature to enact legislation to ensure that cities, counties, and cities and counties receive an amount of money equal to the moneys that these entities would have received under the Vehicle License Fee Law for the 2004–05 fiscal year, as that law read before the effective date of this act.

SEC. 47. The Legislature finds and declares all of the following:

(a) This act would, by means of provisions relating to the allocation of property tax and vehicle license fee revenues, and the rate of the vehicle license fee, comprehensively revise and reform local government finance.

(b) The Local Taxpayers and Public Safety Protection Act, which appears as Proposition 65 on the November 2, 2004, general election ballot (hereafter Proposition 65), would suspend the effect and operation of any interim statute, as defined in Proposition 65, pending the approval of that interim statute in a specified manner by the statewide electorate at the first statewide election occurring after that statute takes effect.

(c) This act comprehensively revises and reforms local government finance by means of various provisions that take effect between November 1, 2003, and November 3, 2004, and that, if proposed on or after November 3, 2004, would be subject to voter approval under Section 1 of Article XIII E of the California Constitution, as added by Proposition 65, should that measure be approved by the voters and take effect.

(d) Therefore, this act is in its entirety an interim statute within the meaning of Proposition 65, the effect and operation of which is suspended pending voter approval as required by that measure, should that measure be approved by the voters and take effect.

SEC. 48. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 49. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enact the statutory changes needed to implement the Budget Act of 2004 to allow the state and local governments to preserve the public peace, health, and safety, it is necessary that this act take effect immediately.

CHAPTER 212

An act to add Section 14553.10 to the Government Code, to amend Sections 7102 and 7105 of, and to add Section 7106 to, the Revenue and Taxation Code, to amend Sections 163 and 164.6 of the Streets and Highways Code, and to amend Section 14902 of the Vehicle Code, relating to transportation, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 11, 2004. Filed with Secretary of State August 11, 2004.]

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

SECTION 1. Section 14553.10 is added to the Government Code, to read:

14553.10. On or before October 1 of each year, the commission shall report to the Governor, the Department of Finance, the Legislative Analyst, and the Chairs of the transportation committees in the Assembly and Senate on the amount of notes that the commission intends to issue for the subsequent fiscal year.

SEC. 2. Section 7102 of the Revenue and Taxation Code is amended to read:

7102. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part, credits or refunds pursuant to Section 60202, and refunds pursuant to Section 1793.25 of the Civil Code, or be transferred in the following manner:

(a) (1) All revenues, less refunds, derived under this part at the $4^3/_4$-percent rate, including the imposition of sales and use taxes with respect to the sale, storage, use, or other consumption of motor vehicle fuel which would not have been received if the sales and use tax rate had been 5 percent and if motor vehicle fuel, as defined for purposes of the Motor Vehicle Fuel License Tax Law (Part 2 (commencing with Section 7301)), had been exempt from sales and use taxes, shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(A) For the 2001–02 fiscal year, those transfers may not be more than eighty-one million dollars ($81,000,000) plus one-half of the amount computed pursuant to this paragraph that exceeds eighty-one million dollars ($81,000,000).

(B) For the 2002–03 fiscal year, those transfers may not be more than thirty-seven million dollars ($37,000,000) plus one-half of the amount computed pursuant to this paragraph that exceeds thirty-seven million dollars ($37,000,000).

(C) For the 2003–04 fiscal year, no transfers shall be made pursuant to this paragraph, except that if the amount to be otherwise transferred pursuant to this paragraph is in excess of eighty-seven million four hundred fifty thousand dollars ($87,450,000), then the amount of that excess shall be transferred.

(D) For the 2004–05 fiscal year, no transfers shall be made pursuant to this paragraph, and of the amount that would otherwise have been transferred, one hundred forty million dollars ($140,000,000) shall instead be transferred to the Traffic Congestion Relief Fund as partial repayment of amounts owed by the General Fund pursuant to Item 2600-011-3007 of the Budget Act of 2002 (Chapter 379 of the Statutes of 2002).

(2) All revenues, less refunds, derived under this part at the $4^3/_4$-percent rate, resulting from increasing, after December 31, 1989, the rate of tax imposed pursuant to the Motor Vehicle Fuel License Tax Law on motor vehicle fuel, as defined for purposes of that law, shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(3) All revenues, less refunds, derived under this part at the $4^3/_4$-percent rate from the imposition of sales and use taxes on fuel, as defined for purposes of the Use Fuel Tax Law (Part 3 (commencing with Section 8601)) and the Diesel Fuel Tax Law (Part 31 (commencing with Section 60001)), shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be transferred quarterly to the Public Transportation Account, a trust fund in the State Transportation Fund.

(4) All revenues, less refunds, derived under this part from the taxes imposed pursuant to Sections 6051.2 and 6201.2 shall be transferred to the Sales Tax Account of the Local Revenue Fund for allocation to cities and counties as prescribed by statute.

(5) All revenues, less refunds, derived from the taxes imposed pursuant to Section 35 of Article XIII of the California Constitution shall be transferred to the Public Safety Account in the Local Public Safety Fund created in Section 30051 of the Government Code for allocation to counties as prescribed by statute.

(b) The balance shall be transferred to the General Fund.

(c) The estimates required by subdivision (a) shall be based on taxable transactions occurring during a calendar year, and the transfers required by subdivision (a) shall be made during the fiscal year that commences during that same calendar year. Transfers required by paragraphs (1), (2), and (3) of subdivision (a) shall be estimated by the State Board of Equalization, with the concurrence of the Department of Finance, and shall be made quarterly.

(d) Notwithstanding the designation of the Public Transportation Account as a trust fund pursuant to subdivision (a), the Controller may use the Public Transportation Account for loans to the General Fund as provided in Sections 16310 and 16381 of the Government Code. The loans shall be repaid with interest from the General Fund at the Pooled Money Investment Account rate.

(e) The Legislature may amend this section, by statute passed in each house of the Legislature by rollcall vote entered in the journal, two-thirds of the membership concurring, if the statute is consistent with, and furthers the purposes of this section.

SEC. 3. Section 7105 of the Revenue and Taxation Code is amended to read:

7105. (a) The Transportation Deferred Investment Fund is hereby created in the State Treasury.

(b) On or before June 30, 2009, the Controller shall transfer an amount from the General Fund to the Transportation Deferred Investment Fund that is equal to the amount that was not transferred from the General Fund to the Transportation Investment Fund for the 2003–04 fiscal year because of the partial suspension of the transfer pursuant to Section 14557 of the Government Code, plus interest calculated at the Pooled Money Investment Account rate relative to the amounts that would otherwise have been available for the transportation programs described in paragraphs (2) to (5), inclusive, of subdivision (c) of Section 7104. The amount to be transferred from the General Fund to the Transportation Deferred Investment Fund shall be reduced by the amount of any payment made to the Transportation Deferred Investment Fund from any funding source, excluding subdivision (d). The money deposited in the Transportation Deferred Investment Fund pursuant to this subdivision is continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(c) The Controller, from the money deposited in the Transportation Deferred Investment Fund pursuant to subdivision (b), shall make transfers and apportionments of those funds in the same manner and amounts that would have been made in the 2003–04 fiscal year from the Transportation Investment Fund pursuant to Section 7104, as that section read on January 1, 2003, if the transfer of funds from the General Fund to the Transportation Investment Fund had not been partially suspended for the 2003–04 fiscal year pursuant to Section 14557 of the Government Code. However, in making those transfers and apportionments, the Controller shall take into account and deduct therefrom any transfers and apportionments that were made from the Transportation Investment Fund in the 2003–04 fiscal year from funds made available pursuant to subdivision (b) of Section 14557 of the

Government Code. It is the intent of the Legislature that upon completion of the transfer of funds pursuant to subdivision (b) from the General Fund to the Transportation Deferred Investment Fund that each of the transportation programs that was to have been funded during the 2003–04 fiscal year from the Transportation Investment Fund pursuant to Section 7104 of the Revenue and Taxation Code shall have received the amount of funding that the program would have received in the absence of the suspension of the transfer pursuant to Section 14557 of the Government Code.

(d) To the extent that funds are provided under clauses (iii) and (v) of subparagraph (A) of subdivision (c) of Section 63048.65 of the Government Code to the Traffic Congestion Relief Fund for apportionment pursuant to subparagraphs (B) and (C) of paragraph (2) of subdivision (c) of Section 7104, paragraph (4) of subdivision (c) of Section 7104, and paragraph (5) of subdivision (c) of Section 7104, the Controller shall deduct an equal amount from any transfer of funds from the Transportation Deferred Investment Fund made for those apportionments and transfer that amount instead to the Traffic Congestion Relief Fund.

(e) The interest that is to be deposited in the Transportation Deferred Investment Fund pursuant to subdivision (b) shall be allocated proportionately to each program element in paragraphs (2) to (5), inclusive, of subdivision (c) of Section 7104, based on the amount that each program did not receive in the 2003–04 fiscal year due to suspension of the transfer pursuant to Section 14557 of the Government Code.

(f) The Legislature finds and declares that continued investment in transportation is essential for the California economy. That investment reduces traffic congestion, assists in economic development, improves the condition of local streets and roads, and provides high-quality public transportation.

SEC. 4. Section 7106 is added to the Revenue and Taxation Code, to read:

7106. (a) On or before June 30, 2008, the Controller shall transfer an amount from the General Fund to the Transportation Deferred Investment Fund that is equal to the amount that was not transferred from the General Fund to the Transportation Investment Fund for the 2004–05 fiscal year because of the suspension of the transfer pursuant to Section 14558 of the Government Code, plus interest calculated at the Pooled Money Investment Account rate relative to the amounts that would otherwise have been available for the transportation programs described in paragraphs (2) to (5), inclusive, of subdivision (c) of Section 7104. The amount to be transferred from the General Fund to the Transportation Deferred Investment Fund shall be reduced by the

amount of any payment made to the Transportation Deferred Investment Fund from any funding source.

(b) The money deposited in the Transportation Deferred Investment Fund pursuant to this subdivision is continuously appropriated without regard to fiscal years for disbursement in the manner and for the purposes set forth in this section.

(c) The Controller, from the money deposited in the Transportation Deferred Investment Fund pursuant to subdivision (a), shall make transfers and apportionments of those funds in the same manner and amounts that would have been made in the 2004–05 fiscal year from the Transportation Investment Fund pursuant to Section 7104, as that section read on January 1, 2003, if the transfer of funds from the General Fund to the Transportation Investment Fund had not been suspended for the 2004–05 fiscal year pursuant to Section 14558 of the Government Code. It is the intent of the Legislature that upon completion of the transfer of funds pursuant to subdivision (a) from the General Fund to the Transportation Deferred Investment Fund that each of the transportation programs that was to have been funded during the 2004–05 fiscal year from the Transportation Investment Fund pursuant to Section 7104 of the Revenue and Taxation Code shall have received the amount of funding that the program would have received in the absence of the suspension of the transfer pursuant to Section 14558 of the Government Code.

(d) The interest that is to be deposited in the Transportation Deferred Investment Fund pursuant to subdivision (a) shall be allocated proportionately to each program element in paragraphs (2) to (5), inclusive, of subdivision (c) of Section 7104, based on the amount that each program did not receive in the 2004–05 fiscal year due to suspension of the transfer pursuant to Section 14558 of the Government Code.

SEC. 5. Section 163 of the Streets and Highways Code is amended to read:

163. The Legislature, through the enactment of this section, intends to establish a policy for the use of all transportation funds that are available to the state, including the State Highway Account, the Public Transportation Account, and federal funds. For the purposes of this section, ''federal funds'' means any obligational authority to be provided under annual federal transportation appropriations acts. The department and the commission shall prepare fund estimates pursuant to Sections 14524 and 14525 of the Government Code based on the following:

(a) Annual expenditures for the administration of the department shall be the same as the most recent Budget Act, adjusted for inflation.

(b) Annual expenditures for the maintenance and operation of the state highway system shall be the same as the most recent Budget Act, adjusted for inflation and inventory, or, when a maintenance plan has been enacted pursuant to Section 164.6, maintenance expenditures shall be based on planned expenditures in that plan.

(c) Annual expenditure for the rehabilitation of the state highway system shall be the same as the most recent Budget Act, or, when a long-range rehabilitation plan has been enacted pursuant to Section 164.6, shall be based on planned expenditures in that long-range plan.

(d) Annual expenditures for local assistance shall be the amount required to fund local assistance programs required by state or federal law or regulations, including, but not limited to, railroad grade crossing maintenance, bicycle transportation account, congestion mitigation and air quality, regional surface transportation programs, local highway bridge replacement and rehabilitation, local seismic retrofit, local hazard elimination and safety, and local emergency relief.

(e) After deducting expenditures for administration, operation, maintenance, local assistance, safety, and rehabilitation pursuant to subdivisions (a), (b), (c), and (d), and for expenditures pursuant to Section 164.56, the remaining funds shall be available for capital improvement projects to be programmed in the state transportation improvement program.

SEC. 6. 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 department shall prepare a five-year maintenance plan that addresses the maintenance needs of the state highway system. The plan shall be updated every two years, concurrent with the rehabilitation plan described in subdivision (a). The maintenance plan shall include only maintenance activities that, if the activities were not performed, could result in increased State Highway Operation and Protection Program costs in the future. These activities may include roadway, structural, and

drainage maintenance. The maintenance plan shall identify any existing backlog in these maintenance activities and shall recommend a strategy, specific activities, and an associated funding level to reduce or prevent any backlog during the plan's five-year period. The maintenance plan shall include specific goals and quantifiable accomplishments, such as lane-miles of highway to be repaved and the number of bridge decks to be sealed. The maintenance plan shall contain strategies to control cost and improve the efficiency of these maintenance activities, and include a cost estimate for the five years of the plan.

(c) The rehabilitation plan and the maintenance plan shall attempt to balance resources between State Highway Operation and Protection Program activities and maintenance activities in order to achieve identified milestones and goals at the lowest possible long-term total cost. If the maintenance plan recommends increases in maintenance spending, it shall identify projected future State Highway Operation and Protection Program costs that would be avoided by increasing maintenance spending. The department's maintenance division shall develop a budget model that allows it to achieve the requirements of this subdivision.

(d) The rehabilitation 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. The maintenance plan shall be transmitted to the Governor, the Legislature, and the commission not later than January 31 of each odd-numbered year.

(e) The rehabilitation plan and the maintenance plan shall be the basis for the department's budget request and for the adoption of fund estimates pursuant to Section 163.

SEC. 7. Section 14902 of the Vehicle Code is amended to read:

14902. (a) Except as otherwise provided in subdivisions (b) and (c) of this section, subdivision (c) of Section 13002, and subdivision (c) of Section 14900, upon an application for an identification card there shall be paid to the department a fee of twenty dollars ($20).

(b) An original or replacement senior citizen identification card issued pursuant to subdivision (b) of Section 13000 shall be issued free of charge.

(c) The fee for an original or replacement identification card issued to a person who has been determined to have a current income level that meets the eligibility requirements for assistance programs under Chapter 2 (commencing with Section 11200) or Chapter 3 (commencing with Section 12000) of Part 3 of, or Part 5 (commencing with Section 17000) of, or Article 9 (commencing with Section 18900) of Chapter 10 of Part 6 of, or Chapter 10.1 (commencing with Section 18930) or Chapter 10.3 (commencing with Section 18937) of Part 6 of, Division 9 of the Welfare

and Institutions Code shall be six dollars ($6). The determination of eligibility under this subdivision shall be made by a governmental or nonprofit entity, which shall be subject to regulations adopted by the department.

(d) All fees received pursuant to this section shall be deposited in the Motor Vehicle Account.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure adequate funding for the operation of state government, it is necessary that this act take effect immediately.

CHAPTER 213

An act relating to education finance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 11, 2004. Filed with Secretary of State August 11, 2004.]

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

SECTION 1. (a) The Legislature hereby invokes subdivision (h) of Section 8 of Article XVI of the California Constitution with regard to the amount of moneys that are required to be applied by the state for the support of school districts and community college districts during the 2004–05 fiscal year pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution.

(b) The amount of money that shall be applied by the state for the support of school districts and community college districts during the 2004-05 fiscal year shall be calculated by subtracting the amount of two billion three million nine hundred ninety-six thousand dollars ($2,003,996,000) from the amount that would otherwise be required to be applied for the support of school districts and community college districts during the 2004–05 fiscal year pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution, if the Legislature had not invoked subdivision (h) of Section 8 of Article XVI.

(c) Subdivision (a) does not apply to subparagraph (B) of paragraph (3) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

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 California Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2004 at the earliest possible time, it is necessary that this bill take effect immediately.

CHAPTER 214

An act to amend Sections 19999.5, 20303, 20340, 20822, 20824, 20894, 21060, 21070.5, 21547, 22874, 22875, and 22877 of, to add Sections 20281.5 and 20908 to, and to add Chapter 8.6 (commencing with Section 19999.3) to Part 2.6 of Division 5 of Title 2 of, the Government Code, relating to public employees' retirement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 11, 2004. Filed with Secretary of State August 11, 2004.]

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

SECTION 1. Chapter 8.6 (commencing with Section 19999.3) is added to Part 2.6 of Division 5 of Title 2 of the Government Code, to read:

CHAPTER 8.6. ALTERNATE RETIREMENT PROGRAM FOR NEW EMPLOYEES EXEMPTED FROM CONTRIBUTIONS TO THE PUBLIC EMPLOYEES' RETIREMENT SYSTEM

19999.3. (a) The Legislature finds and declares that this chapter is intended to provide an alternate retirement program for new state employees who are members of the Public Employees' Retirement System pursuant to Section 20281.5 and who, during the 24 months of employment following the date they qualify for membership in the system pursuant to that section, do not make contributions into the defined benefit retirement program.

(b) The Legislature hereby authorizes the development of a retirement program under the Deferred Compensation Plan, the tax-deferred Savings Plan, or any other acceptable defined contribution plan.

(c) The state employees described in subdivision (a) who are employed in positions that are subject to the federal system, as defined in Section 20033, shall contribute to the retirement program 5 percent of compensation, as set forth in Part 3 (commencing with Section

20000), in excess of five hundred thirteen dollars ($513) per month paid that member for service rendered. The state employer shall pick up the contribution, as authorized by Section 414(h) of the Internal Revenue Code, and shall deduct the contribution from the employee's compensation. The contributions required by this subdivision shall cease when the state employee begins making contributions to the defined benefit retirement program.

(d) (1) ''State employees,'' as used in this section, include employees, as defined in Section 19815.

(2) This section shall not apply to employees of the California State University, the University of California, or the legislative or judicial branch.

(e) If the retirement program authorized by this section is inconsistent with federal laws or rules or becomes unnecessary under state or federal law, this section shall become inoperative.

19999.31. The Department of Personnel Administration shall administer the retirement program established by this chapter. The department shall provide the method by which benefit payments shall be made to eligible recipients. The department shall establish the program, the transfer of contributions to the Public Employees' Retirement System upon qualification and election by the member, continued participation in the program, and other provisions necessary for the implementation of the retirement program. The department may assess each state agency a fee for the costs associated with administration of this program.

SEC. 2. Section 19999.5 of the Government Code is amended to read:

19999.5. In order to encourage savings and increase the savings options available to state employees, the department may establish and administer tax-deferred savings plans in accordance with Section 401(a) of the Internal Revenue Code, including cash or deferral arrangements under Section 401(k) of the Internal Revenue Code. The department may develop specifications and contract for the administration of the plans to the extent necessary to carry out this section. These plans shall be provided in addition to the retirement and deferred compensation programs currently authorized, shall offer the maximum flexibility available under current federal law, and may provide for employer as well as employee contributions.

SEC. 3. Section 20281.5 is added to the Government Code, to read:

20281.5. (a) Notwithstanding Section 20281, a person who becomes a state miscellaneous or state industrial member of the system on or after the effective date of this section because the person is first employed by the state and qualifies for membership shall be subject to the provisions of this section.

(b) Members subject to this section shall not accrue credit for service in the system and shall not make employee contributions to the system, including the contributions set forth in Section 20677.4, for employment with the state until the first day of the first pay period commencing 24 months after becoming a member of the system.

(c) Notwithstanding subdivision (a), this section shall not apply to any of the following:

(1) Persons who are already members or annuitants of the system at the time they are first employed by the state.

(2) Employees of the California State University, or the legislative or judicial branch of state government.

(3) Members of the Judges' Retirement System, the Judges' Retirement System II, the Legislators' Retirement System, the State Teachers' Retirement System, or the University of California Retirement Plan.

(4) Persons who are members of a reciprocal retirement system and whose employment was subject to a reciprocal retirement system within the six months prior to membership in this system.

(5) Persons whose service is not included in the federal system.

(6) Persons who are employed by the Department of the California Highway Patrol as students at the department's training school established pursuant to Section 2262 of the Vehicle Code.

(7) Persons who had ceased to be members pursuant to Section 20340 or 21075.

(d) Any regulations adopted by the board to implement the requirements of this section shall not be subject to the review and approval of the Office of Administrative Law, pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3. The regulations shall become effective immediately upon filing with the Secretary of State.

SEC. 4. Section 20303 of the Government Code is amended to read:

20303. (a) Persons who are members of any other retirement or pension system supported wholly or in part by funds of the United States government, any state government, or any political subdivision thereof and who are receiving credit in the other system for service are, as to that service, excluded from this system.

(b) (1) For the purpose of this section only, persons who are receiving pensions, retirement allowances, or other payments, from any source whatever, on account of service rendered to an employer other than the state and while they were not in state service, are not, because of that receipt, members of any other retirement or pension system.

(2) For the purposes of this section only, persons who participate in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) or Chapter 8.6 (commencing with

Section 19999.3) of Part 2.6 or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5, are not, because of that participation, members of any other retirement or pension system.

(3) For the purposes of this section only, persons who participate in a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code are not, because of that participation, members of any other retirement or pension system, so long as the contracting agency has received a ruling from the Internal Revenue Service stating that the money purchase pension plan and trust qualifies under Section 401(a) and furnishes proof thereof upon request by the board.

(4) For the purposes of this section only, persons who participate in a supplemental defined benefit plan maintained by their employer that meets the requirements of Section 401(a) of Title 26 of the United States Code are not, because of that participation, members of another retirement or pension system, provided that all of the following conditions exist:

(A) The defined benefit plan provided under this part has been designated as the employer's primary plan for the person.

(B) The supplemental defined benefit plan has received a ruling from the Internal Revenue Service stating that the plan qualifies under Section 401(a) of Title 26 of the United States Code, and has furnished proof thereof to the employer and, upon request, to the board.

(C) The person's participation in the supplemental defined benefit plan does not, in any way, interfere with the person's rights to membership in the defined benefit plan, or any benefit provided, under this part.

SEC. 5. Section 20340 of the Government Code is amended to read:

20340. A person ceases to be a member:

(a) Upon retirement, except while participating in reduced worktime for partial service retirement.

(b) If he or she is paid his or her normal contributions, unless payment of contributions is the result of an election pursuant to paragraph (1) of subdivision (b) of Section 21070, or unless, after reducing the member's credited service by the service applicable to the contributions being withdrawn, the member meets the requirements of Section 21075 or if he or she is paid a portion of his or her normal contributions where more than one payment is made, or these contributions are held pursuant to Section 21500. For the purposes of this subdivision, deposit in the United States mail of a warrant drawn in favor of a member, addressed to the latest address of the member on file in the office of this system, electronic fund transfer to the person's bank, savings and loan association, or credit union account, constitutes payment to the person

of the amount for which the warrant is drawn or electronically transferred.

(c) If the member has less than five years of service credit and no accumulated contributions in the retirement fund at the time of termination of service, unless the member establishes membership in the Judges' Retirement System, the Judges' Retirement System II, the Legislators' Retirement System, the State Teachers' Retirement System, or the University of California Retirement System, or establishes reciprocity with a reciprocal retirement system.

SEC. 6. Section 20822 of the Government Code is amended to read:

20822. (a) From the General Fund in the State Treasury there is appropriated quarterly, to the retirement fund, the state's contribution for all of the following:

(1) All state miscellaneous members and all other categories of members whose compensation is paid from the General Fund.

(2) All university members whose compensation is paid from funds of, or funds appropriated to, the university.

(3) All state miscellaneous members who are employed by the State Department of Education or the Department of Rehabilitation and whose compensation is paid from the Vocational Education Federal Fund, the Vocational Rehabilitation Federal Fund, or any other fund received, in whole or in part, as a donation to the state under restrictions preventing its use for state contributions to the retirement system.

(4) All state miscellaneous members and all other categories of members whose compensation is paid from the Senate Operating Fund or the Assembly Operating Fund or the Operating Funds of the Assembly and Senate.

(b) No appropriation shall be required pursuant to this section with respect to any state member who, pursuant to Section 20281.5, is not accruing service credit during the first 24 months of service, unless and until that service credit is credited to the member.

SEC. 7. Section 20824 of the Government Code is amended to read:

20824. (a) From each other fund in the State Treasury there is appropriated quarterly to the retirement fund the state's contribution for all members whose compensation is paid from that fund and in respect to which compensation the state's contribution is not required to be made from the General Fund.

(b) No appropriation shall be required pursuant to this section with respect to any state member who, pursuant to Section 20281.5, is not accruing service credit during the first 24 months of service, unless and until that service credit is credited to the member.

SEC. 8. Section 20894 of the Government Code is amended to read:

20894. (a) A person shall not receive credit for the same service in two retirement systems supported wholly or in part by public funds under any circumstance.

(b) Nothing in this section shall preclude concurrent participation and credit for service in a public retirement system and in a deferred compensation plan established pursuant to Chapter 4 (commencing with Section 19993) or Chapter 8.6 (commencing with Section 19999.3) of Part 2.6 or pursuant to Article 1.1 (commencing with Section 53212) of Chapter 2 of Part 1 of Division 2 of Title 5, a tax-deferred retirement plan that meets the requirements of Section 40l(k) of Title 26 of the United States Code, or a money purchase pension plan and trust that meets the requirements of Section 401(a) of Title 26 of the United States Code.

(c) Nothing in this section shall preclude concurrent participation and credit for service in the defined benefit plan provided under this part and in a supplemental defined benefit plan maintained by the employer that meets the requirements of Section 401(a) of Title 26 of the United States Code, provided all of the following conditions exist:

(1) The defined benefit plan provided under this part has been designated as the employer's primary plan for the person.

(2) The supplemental defined benefit plan has received a ruling from the Internal Revenue Service stating that the plan qualifies under Section 401(a) of Title 26 of the United States Code, and has furnished proof thereof to the employer and, upon request, to the board.

(3) The person's participation in the supplemental defined benefit plan does not, in any way, interfere with the person's rights to membership in the defined benefit plan, or any benefit provided, under this part.

SEC. 9. Section 20908 is added to the Government Code, to read:

20908. (a) A member who, pursuant to Section 20281.5, did not accrue service credit with respect to his or her service to the state may elect to receive credit for that service within the period of time beginning on the first day of the 47th month and ending on the last day of the 49th month after the date on which the member became a member of the system.

(b) Any member electing to receive credit for service under this section shall cause to be transferred to the system the accumulated contributions, including earnings, standing to the member's credit in the retirement program established pursuant to Chapter 8.6 (commencing with Section 19999.3) of Part 2.6. Upon transfer of the accumulated contributions, including earnings, the member shall receive credit for all service that, pursuant to Section 20281.5, was not credited.

(c) A member who does not make the election within the period specified in subdivision (a), may elect at any time prior to retirement to receive credit for the service that, pursuant to Section 20281.5, was not

credited by making the contributions specified in Sections 21050 and 21052.

SEC. 10. Section 21060 of the Government Code is amended to read:

21060. (a) A member shall be retired for service upon his or her written application to the board if he or she has attained age 50 and is credited with five years of state service, except as provided in Sections 21061, 21062, and 21074.

(b) For purposes of this section, ''state service'' includes service to the state for which the member, pursuant to Section 20281.5, did not receive credit.

SEC. 11. Section 21070.5 of the Government Code is amended to read:

21070.5. (a) Notwithstanding any other provision of this article, a person who, on or after January 1, 2000, becomes a state miscellaneous or state industrial member of the system because the person (1) is first employed by the state, (2) returns to employment with the state from a break in service of more than 90 days, or (3) returns to employment with the state after ceasing to be a member pursuant to Section 20340 or 21075, shall be subject to the benefits provided by Section 21354.1, unless the person elects within 180 days of membership as a state miscellaneous or state industrial member to be subject to the Second Tier benefits provided for in Section 21076. This section shall only apply to state miscellaneous and state industrial members who are (1) excluded from the definition of state employee in subdivision (c) of Section 3513, (2) employed by the executive branch of government and are not members of the civil service, or (3) included in the definition of state employee in subdivision (c) of Section 3513.

(b) The effective date of the election shall be the first day of the month following the date the election is received by the system and shall be applicable to state service rendered on and after that date. Any election filed with the board pursuant to this section shall also be signed by the spouse of the member.

(c) A member who makes an election authorized by this section shall not be precluded from making a subsequent election pursuant to Section 21073.7 to be subject to the benefits provided by Section 21354.1.

(d) Operation and application of this section are subject to the limitations set forth in Section 21251.13.

(e) For a member subject to Section 20281.5, the 180-day election period shall not commence until the first day of the first pay period commencing 24 months after becoming a member of the system.

SEC. 12. Section 21547 of the Government Code is amended to read:

21547. (a) Notwithstanding any other provision of this article requiring attainment of the minimum age for voluntary service retirement to the member in his or her last employment preceding death, upon the death of a state member on or after January 1, 1993, who is credited with 20 years or more of state service, the surviving spouse, or eligible children if there is no surviving spouse, may receive a monthly allowance in lieu of the basic death benefit. The board shall notify the eligible survivor, as defined in Section 21546, of this alternate death benefit. The board shall calculate the monthly allowance that shall be payable as follows:

(1) To the member's surviving spouse, an amount equal to the amount the member would have received if the member had retired for service at minimum retirement age on the date of death and had elected optional settlement 2 and Section 21459.

(2) If the member made a specific beneficiary designation under Section 21490, the monthly allowance shall be based only on that portion of the amount the member would have received described in paragraph (1) that would have been derived from the nonmember spouse's community property interest in the member's contributions and service credit.

(3) If there is no surviving spouse or the spouse dies before all of the children of the deceased member attain the age of 18 years, to the surviving children, under the age of 18 years, collectively, an amount equal to one-half of, and derived from the same source as, the unmodified allowance the member would have received if he or she had retired for service at minimum retirement age on the date of death. No child shall receive any allowance after marrying or attaining the age of 18 years. As used in this paragraph, ''surviving children'' includes a posthumously born child or children of the member.

(b) This section shall only apply to members employed in state bargaining units for which a memorandum of understanding has been agreed to by the state employer and the recognized employee organization to become subject to this section, members who are excluded from the definition of state employees in subdivision (c) of Section 3513, and members employed by the executive branch of government who are not members of the civil service.

(c) For purposes of this section, ''state service'' means service rendered as a state employee, as defined in Section 19815. This section shall not apply to any contracting agency nor to the employees of any contracting agency.

(d) For purposes of this section, ''state service'' includes service to the state for which the member, pursuant to Section 20281.5, did not receive credit.

SEC. 13. Section 22874 of the Government Code is amended to read:

22874. (a) Notwithstanding Sections 22870, 22871, and 22873, a state employee, defined by subdivision (c) of Section 3513, who becomes a state member of the system after January 1, 1989, may not receive any portion of the employer contribution payable for annuitants unless the person is credited with 10 years of state service at the time of retirement. This section shall apply only to state employees that retire for service. For purposes of this section, ''state service'' means service rendered as an employee of the state or an appointed or elected officer of the state for compensation. Notwithstanding Section 22826, for purposes of this section, credited state service includes service to the state for which the employee, pursuant to Section 20281.5, did not receive credit.

(b) This section does not apply to employees of the California State University or the Legislature.

SEC. 14. Section 22875 of the Government Code is amended to read:

22875. (a) Notwithstanding Sections 22870, 22871, 22873, and 22874, a state employee who becomes a state member of the system after January 1, 1990, and is either excluded from the definition of a state employee in subdivision (c) of Section 3513, or a nonelected officer or employee of the executive branch of government who is not a member of the civil service, may not receive any portion of the employer contribution payable for annuitants, unless the employee is credited with 10 years of state service, as defined by this section, at the time of retirement.

(b) The percentage of the employer contribution payable for postretirement health benefits for an employee subject to this section shall be based on the completed years of credited state service at retirement as shown in the following table:

Credited Years of Service	Percentage of Employer Contribution
10	50
11	55
12	60
13	65
14	70
15	75
16	80
17	85
18	90

19	95
20 or more	100

(c) This section shall apply only to state employees who retire for service.

(d) Benefits provided to an employee subject to this section shall be applicable to all future state service.

(e) For the purposes of this section, ''state service'' means service rendered as an employee or an appointed or elected officer of the state for compensation. Notwithstanding Section 22826, for purposes of this section, credited state service includes service to the state for which the employee, pursuant to Section 20281.5, did not receive credit.

(f) This section does not apply to employees of the California State University or the Legislature.

SECTION 15. Section 22877 of the Government Code, as added by Section 22 of Chapter 69 of the Statutes of 2004, is amended to read:

22877. (a) As used in this section, the following definitions shall apply:

(1) ''Coinsurance'' means the provision of a health benefit plan design that requires the health benefit plan and state employee or annuitant to share the cost of hospital or medical expenses at a specified ratio.

(2) ''Deductible'' means the annual amount of out-of-pocket medical expenses that a state employee or annuitant must pay before the health benefit plan begins paying for expenses.

(3) ''Program'' means the Rural Health Care Equity Program.

(4) ''Rural area'' means an area in which there is no board-approved health maintenance organization plan available for enrollment by state employees or annuitants residing in the area.

(b) (1) The Rural Health Care Equity Program is hereby established for the purpose of funding the subsidization and reimbursement of premium costs, deductibles, coinsurance, and other out-of-pocket health care expenses paid by employees and annuitants living in rural areas that would otherwise be covered if the state employee or annuitant was enrolled in a board-approved health maintenance organization plan. The program shall be administered by the Department of Personnel Administration or by a third-party administrator approved by the Department of Personnel Administration in a manner consistent with all applicable state and federal laws. The board shall determine the rural area for each subsequent fiscal year, at the same time that premiums for health maintenance organization plans are approved.

(2) Separate accounts shall be maintained within the program for all of the following:

(A) Employees, as defined in subdivision (c) of Section 3513.

(B) Excluded employees, as defined in subdivision (b) of Section 3527.

(C) State annuitants.

(c) Moneys in the program shall be allocated to the respective accounts as follows:

(1) The contribution provided by the state with respect to each employee, as defined in subdivision (c) of Section 3513, who lives in a rural area and is otherwise eligible, shall be an amount determined through the collective bargaining process.

(2) The contribution provided by the state with respect to each excluded employee, as defined in subdivision (b) of Section 3527, who lives in a rural area and is otherwise eligible, shall be an amount equal to, but not to exceed, the amount contributed pursuant to paragraph (1).

(3) The contribution provided by the state with respect to each state annuitant who lives in a rural area, is not a Medicare participant, resides in California, and is otherwise eligible, shall be an amount not to exceed five hundred dollars ($500) per year.

(4) The contribution provided by the state with respect to each state annuitant who lives in a rural area, resides in California, participates in a supplement Medicare health benefit plan, and is otherwise eligible, shall be an amount equal to the Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars ($75) per month. The program may not reimburse for penalty amounts.

(5) If an employee enters or leaves service with the state during a fiscal year, contributions for the employee shall be made on a pro rata basis. A similar computation shall be used for anyone entering or leaving the bargaining unit, including a person who enters the bargaining unit by promotion during a fiscal year.

(d) Each fund of the State Treasury, other than the General Fund, shall reimburse the General Fund for any sums allocated pursuant to subdivision (c) for employees whose compensation is paid from that fund. That reimbursement shall be accomplished using the following methodology:

(1) On or before December 1 of each year, the Department of Personnel Administration shall provide a list of active state employees who participated in the program during the previous fiscal year to each employing department.

(2) On or before January 15 of each year, each department that employed an active state employee identified by the Department of Personnel Administration as a participant in the program shall provide the Department of Personnel Administration with a list of the funds used to pay each employee's salary, along with the proportion of each employee's salary attributable to each fund.

(3) Using the information provided by the employing departments, the Department of Personnel Administration shall compile a list of program payments attributable to each fund. On or before February 15 of each year, the Department of Personnel Administration shall transmit this list to the Department of Finance.

(4) The Department of Finance shall certify to the Controller the amount to be transferred from the unencumbered balance of each fund to the General Fund.

(5) The Controller shall transfer to the General Fund from the unencumbered balance of each impacted fund the amount specified by the Department of Finance.

(6) To ensure the equitable allocation of costs, the Director of the Department of Personnel Administration or the Director of Finance may require an audit of departmental reports.

(e) For any sums allocated pursuant to subdivision (c) for annuitants, funds, other than the General Fund, shall be charged a fair share of the contribution provided by the state in accordance with the provisions of Article 2 (commencing with Section 11270) of Chapter 3 of Part 1 of Division 3. On or before July 31 of each year, the Department of Personnel Administration shall provide the Department of Finance with the total costs allocated for annuitants in the previous fiscal year. The reported costs may not include expenses that have been incurred but not claimed as of July 31.

(f) Notwithstanding any other provision of law and subject to the availability of funds, moneys within the program shall be disbursed for the benefit of eligible employees. The disbursements shall subsidize the preferred provider plan premiums for the employee by an amount equal to the difference between the weighted average of board-approved health maintenance organization premiums and the lowest board-approved preferred provider plan premium available under this part, and reimburse the employee for a portion or all of his or her incurred deductible, coinsurance, and other out-of-pocket health-related expenses that would otherwise be covered if the employee and his or her family members were enrolled in a board-approved health maintenance organization plan. These subsidies and reimbursements shall be provided as determined by the Department of Personnel Administration, which may include, but is not limited to, a supplemental insurance plan, a medical reimbursement account, or a medical spending account plan.

(g) Notwithstanding any other provision of law and subject to the availability of funds, moneys within the program shall be disbursed for the benefit of eligible annuitants. The disbursements shall either reimburse the annuitant, if not a Medicare participant, for some or all of the deductible incurred by the annuitant or a family member, not to exceed five hundred dollars ($500) per fiscal year, or reimburse the

annuitant, if a Medicare participant, for Medicare Part B premiums incurred by the annuitant, not to exceed seventy-five dollars ($75) per month. The program may not reimburse for penalty amounts. These reimbursements shall be provided by the Department of Personnel Administration. Notwithstanding any other provision of law, any annuitant who cannot be located within a period of three months and whose disbursement is returned to the Controller as unclaimed is ineligible to participate in the program.

(h) Moneys remaining in an account of the program at the end of any fiscal year shall remain in the account for use in subsequent fiscal years, until the account is terminated. Moneys remaining in a program account upon termination, after payment of all expenses and claims incurred prior to the date of termination, shall be deposited in the General Fund.

(i) The Legislature finds and declares that the program is established for the exclusive benefit of employees, annuitants, and family members.

(j) This section shall cease to be operative on January 1, 2008, or on an earlier date if the board makes a formal determination that health maintenance organization plans are no longer the most cost-effective health benefit plans offered by the board.

SEC. 16. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enact the statutory changes necessary to implement the Budget Act of 2004, it is necessary that this act take effect immediately.

CHAPTER 215

An act to amend Sections 16920 and 16929 of, and to add Chapter 8 (commencing with Section 16940) to Part 3 of Division 4 of Title 2 of, the Government Code, relating to public pension obligations, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 11, 2004. Filed with Secretary of State August 11, 2004.]

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

SECTION 1. It is the intent of the Legislature and the Governor that a purpose of selling pension obligation bonds pursuant to this act is to avoid tax increases and further reductions in critical state programs for the 2004–05 fiscal year.

SEC. 2. Section 16920 of the Government Code is amended to read:

16920. (a) Solely for the purpose of the issuance and sale of the bonds and ancillary obligations authorized by this chapter and by Chapter 8 (commencing with Section 16940), the Pension Obligation Bond Committee is hereby created. The committee consists of the Governor or his or her designee, the Director of Finance, the Controller, the Treasurer, the Secretary of Business, Transportation and Housing, the Director of General Services, and the Director of Transportation. Notwithstanding Section 7.5 or other provisions of law, any member may designate a deputy to act as the member in his or her place and stead for all purposes, as though the member were personally present. The Legislature hereby finds and declares that each member of the committee has previously acted as a member of a similar finance committee, and has duties in relation to the payment of pension obligations relating to employees under supervision of the member.

(b) A majority of the committee shall constitute a quorum of the committee and may act for the committee. The Director of Finance shall serve as chairperson of the committee.

(c) No member, officer, or agent of the committee is subject to personal liability on any bonds or ancillary obligations or other obligations issued or entered into under this chapter or Chapter 8 (commencing with Section 16940) or for any acts or omissions of members, officers, or agents in carrying out the powers and duties conferred by this chapter or Chapter 8 (commencing with Section 16940).

SEC. 3. Section 16929 of the Government Code is amended to read:

16929. There is hereby created in the State Treasury the Pension Obligation Bond Fund. The net proceeds of bonds issued and sold pursuant to this chapter and bonds issued and sold pursuant to Chapter 8 (commencing with Section 16940) shall be deposited in the Pension Obligation Bond Fund. Notwithstanding Section 13340, the Pension Obligation Bond Fund is hereby continuously appropriated for the purposes specified in this chapter and Chapter 8 (commencing with Section 16940).

SEC. 4. Chapter 8 (commencing with Section 16940) is added to Part 3 of Division 4 of Title 2 of the Government Code, to read:

CHAPTER 8. THE CALIFORNIA PENSION RESTRUCTURING BOND ACT OF 2004

Article 1. General Provisions

16940. This chapter shall be known and may be cited as the California Pension Restructuring Bond Act of 2004.

16941. It is the intent of the Legislature, in enacting this chapter, to provide for an efficient, equitable, and economical means of satisfying certain pension obligations of the state. Bonds shall be issued pursuant to this chapter only when the Director of Finance determines that the state's pension obligations are anticipated to be reduced as a result of changes in the Public Employees' Retirement Law that reduce contributions to the Public Employees' Retirement System, and it is in the best interest of the state to issue bonds pursuant to this chapter to accelerate a portion of the state's anticipated lower pension obligations.

16942. The Legislature hereby finds and declares that the state's obligation to pay its pension obligations to the Public Employees' Retirement System in the amounts established by the Board of Administration of the Public Employees' Retirement System, cannot be deferred by the state; that the state's pension obligations are due and payable at predetermined times; and that the Controller is required to pay those pension obligations when they are due. The Legislature further finds that the state's pension obligations cannot be included in an accumulated state budget deficit, as defined in Section 1.3 of Article XVI of the California Constitution. Further, the Legislature finds that its pension obligations are imposed by law, and not subject to Section 1 of Article XVI of the California Constitution and that the bonds authorized to be issued under this chapter have the same character under the Constitution as the pension obligations funded or refunded.

16943. Unless the context otherwise requires, the following definitions shall govern the construction of this chapter:

(a) ''Ancillary obligation'' means the obligation of the state under any credit enhancement or liquidity agreement, including any of the following:

(1) An obligation in the form of bond insurance, a letter of credit, standby bond purchase agreement, reimbursement agreement, liquidity facility, or other similar arrangement.

(2) An obligation under any remarketing agreement, auction agent agreement, broker-dealer agreement, or other agreement relating to the marketing of the bonds, interest rate or other type of swap or hedging contract.

(3) An obligation under any investment agreement, forward purchase agreement, or similar structured investment contract, entered into by the committee in connection with any bonds issued under this chapter.

(b) ''Bonds'' means any bonds, notes, bond anticipation notes, interim certificates, debentures, or other obligations or forms of indebtedness issued pursuant to this chapter.

(c) ''Committee'' means the Pension Obligation Bond Committee established pursuant to Section 16920.

(d) ''Pension obligations'' means the obligations of the state or any state agency to the retirement system imposed by the retirement laws in the amounts determined by the board of administration of the retirement system.

(e) ''Program'' means the program established by this chapter under which the committee shall issue bonds for the purpose of funding or refunding pension obligations.

(f) ''Retirement laws'' means Section 17 of Article XVI of the California Constitution and the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5) and any other laws providing for payment to be made by the state or any state agency to the retirement system to provide retirement benefits to employees of the state or any other individuals for which the state has an obligation to pay all or a portion of the contributions to the retirement system to ensure the payment of retirement benefits to those individuals.

(g) ''Retirement system'' means the Public Employees' Retirement System established pursuant to the Public Employees' Retirement Law (Part 3 (commencing with Section 20000) of Division 5).

Article 2. Issuance of Bonds to Finance the Program

16945. The committee is authorized and empowered, for and in the name and on behalf of the state, to do all of the following:

(a) Upon the request of the Director of Finance, and following receipt of the determination of the Director of Finance pursuant to Section 16941, issue taxable or tax-exempt bonds for the purpose of funding or refunding pension obligations, paying related costs and ancillary obligations, or refunding any bonds previously issued pursuant to this chapter.

(b) Execute debentures or other instruments evidencing the pension obligations.

(c) Enter into ancillary obligations and other contracts deemed necessary by the committee in connection with any bonds issued under this chapter.

(d) Establish the terms and conditions for the program undertaken pursuant to this chapter.

(e) Employ or contract for legal, consulting, underwriting, or other services in connection with the program as may be necessary in the judgment of the committee, as approved by the Treasurer, as agent for sale of the bonds, for the successful financing of the program and the issuance and sale of bonds.

(f) In addition to the powers specifically granted in this chapter, do all things necessary or convenient, including delegation of necessary

duties to the Director of Finance, as chairperson, and to the Treasurer, as agent for sale of the bonds, to carry out the purposes of this chapter.

16946. Every issue of bonds, and any ancillary obligation entered into with respect to those bonds, shall be a debt and liability of the state payable from the General Fund of the state or, in the case of bond anticipation notes, payable from the proceeds of bonds to be issued pursuant to this chapter.

16947. (a) The cumulative amount of outstanding bonds issued pursuant to this chapter may not exceed the lesser of (1) the sum of two billion dollars ($2,000,000,000); or (2) the amount which, when added to all anticipated interest and related costs of the bonds, does not exceed the anticipated reduction of the state's pension obligations as a result of changes in the retirement law that reduce contributions to the retirement system, as determined by the Director of Finance.

(b) Notwithstanding subdivision (a), the cumulative amount of bonds issued pursuant to this chapter in any one fiscal year may not exceed the total unpaid amount of the state's pension obligations for that fiscal year.

(c) Bonds may be issued pursuant to this chapter in any two fiscal years after June 30, 2004, but may not be issued in any more than two fiscal years.

16948. (a) The resolution, certificate, or other instrument of the committee authorizing the issuance of the bonds may provide, or the committee may delegate to the Treasurer, as agent for sale of the bonds, responsibility to determine, any or all of the following for the bonds:

(1) The form of the bonds, which may be issued as serial bonds, term bonds, or installment bonds, or any combination of those.

(2) The date to be borne by any bonds.

(3) The time of maturity of any bonds, which maturities may be before or after the term of the related pension obligation to be funded or refunded.

(4) The interest, fixed or variable, to be borne by the bonds.

(5) The time that the bonds shall be payable.

(6) The denominations, form, and registration privileges of the bonds.

(7) The manner of execution of the bonds.

(8) The place the bonds are payable, which may include any paying agent within or outside of the state.

(9) The terms of redemption of the bonds.

(10) The establishment of funds and accounts to be held by a trustee to provide for payment or security for the bonds or ancillary obligations or related costs.

(11) Any other terms and conditions deemed necessary by the committee.

(b) Pursuant to Section 5702, the Treasurer shall serve as agent for the offer and sale of the bonds. The bonds may be sold at either a competitive or negotiated sale, at times and at prices, for consideration, and with all other terms and conditions as the Treasurer, in his or her capacity as agent for sale of the bonds, shall determine.

(c) The Treasurer is authorized to invest or direct the investment of any amounts held in trust for payment of the bonds in any securities or obligations authorized pursuant to Chapter 3 (commencing with Section 16430) of Part 2, as amended from time to time.

16949. The proceeds of the bonds shall be applied to the funding or refunding of pension obligations, or refunding of bonds previously issued under this chapter, together with all costs of issuing the bonds and refunding pension obligations or prior bonds and the costs of any ancillary obligation. Notwithstanding Sections 20822 and 20824, or any other provision of law, the proceeds of the bonds may be applied to the prepayment of pension obligations.

16950. When proceeds of bonds issued pursuant to this chapter are used to pay the state's pension obligations to the retirement system for members whose compensation is paid from a fund other than the General Fund, the Controller shall, notwithstanding any other provision of law, transfer quarterly from the special fund or nongovernmental cost fund to the General Fund an amount equal to the quarterly pension obligations paid from bond proceeds with respect to those members, as certified by the Director of Finance and authorized in any appropriation item or in any category thereof.

16951. When proceeds of bonds issued pursuant to this chapter are used to pay the state's pension obligations to the retirement system for members whose compensation is paid from the General Fund, the Controller shall, notwithstanding any other provision of law, abate quarterly to the General Fund an amount equal to the quarterly pension obligations paid from bond proceeds with respect to those members, as certified by the Director of Finance and authorized in any General Fund appropriation item or in any category thereof.

16952. In the discretion of the committee, any bonds issued under this chapter may be secured by a trust agreement, indenture, or resolution between the state and any trustee, which may be the Treasurer or any trust company or bank having the powers of a trust company chartered under the laws of any state or the United States and designated by the Treasurer. The trust agreement, indenture, or resolution may contain provisions for protecting and enforcing the rights and remedies of the bond owners as may be reasonable and not in violation of law. Any trust agreement, indenture, or resolution may set forth the rights and remedies of the bond owners and of the trustee and may restrict the individual right of action by bond owners. In addition to the foregoing, any trust agreement,

indenture, or resolution may contain other provisions as the committee may deem reasonable for the security of the bond owners, including, but not limited to, provisions specifying the date or dates on which debt service payments on the bonds shall be transferred to the trustee. Any trust accounts created by the trust agreement, indenture, or resolution may be held outside the State Treasury.

16953. The committee may provide for the issuance of bonds any portion of which is to be used for the purpose of refunding outstanding bonds issued to fund or refund pension obligations, including the payment of the principal thereof and interest and redemption premiums, if any. The proceeds of bonds issued to refund any outstanding bonds may be applied to the retirement of those outstanding bonds at maturity, or the redemption, on any redemption date, or purchase of those outstanding bonds prior to maturity, subject to the terms and conditions as the committee deems advisable.

16954. The net proceeds of bonds issued and sold pursuant to this chapter shall be deposited in the Pension Obligation Bond Fund established pursuant to Section 16929.

Article 3. Miscellaneous Provisions

16955. This chapter, being necessary for the health, welfare, and safety of the state and its residents, shall be liberally construed to effect its purposes.

16956. This chapter shall be deemed to provide a complete and alternative authorization to take the actions necessary to implement this chapter, and shall be regarded as supplemental and additional to the powers conferred by other laws. The issuance of the bonds and their terms, the application of proceeds to the funding or refunding of pension obligations or prior bonds, and the entering into of any ancillary obligation under this chapter need not comply with the requirements of any other law applicable to the issuance of bonds or ancillary obligations, including, but not limited to, the State General Obligation Bond Law (Chapter 4 (commencing with Section 16720)). The purposes authorized by this chapter may be effectuated and bonds are authorized to be issued for any purposes under this chapter notwithstanding that any other law may provide for those purposes or for the issuance of bonds for like purposes and without regard to the requirements, restrictions, limitations, or other provisions contained in any other law.

16957. Section 10295 of the Public Contract Code and Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code do not apply to agreements entered into by the committee, or any individual to whom the committee delegates

contracting authority, in connection with the sale of bonds or other matters authorized under this chapter.

16958. Bonds issued pursuant to this chapter are a legal investment for any state special fund or trust fund, notwithstanding any provision of law limiting the investments that may be made by the fund. The bonds shall be legal investments in which all public officers and public bodies of the state, its political subdivisions, all municipalities and municipal subdivisions, all insurance companies and associations and other persons carrying on an insurance business, all banks, bankers, banking institutions, including savings and loan associations, building and loan associations, trust companies, savings banks and savings associations, investment companies, and other persons carrying on banking business, all administrators, guardians, executors, trustees, and other fiduciaries, and all persons authorized to invest in bonds or other obligations of the state, may properly and legally invest funds, including capital, in their control or belonging to them. The bonds may be used by any private financial institution, person, or association as security for public officers and bodies of the state or any agency or political subdivision of the state and all municipalities and public corporations for any purpose for which the deposit of bonds or other obligations of the state is authorized by law, including deposits to secure public funds.

16959. The committee may bring an action to determine the validity of any bonds to be issued, or any ancillary obligations and other contracts to be entered into, under this chapter pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure. For the purposes of Section 860 of the Code of Civil Procedure, any action initiated pursuant to this section shall be brought in the Superior Court of the County of Sacramento.

16960. Notwithstanding Section 13340, there is hereby continuously appropriated, without regard to fiscal year, from the General Fund for the purposes of this chapter, an amount, subject to the limitations of this chapter, that equals the sum annually that is necessary to pay all obligations, including principal, interest, costs, expenses, rebate, legal, commitment, or other fees, and all other amounts incurred by the state under or in connection with bonds and any ancillary obligations payable entered into by the state. The amount hereby appropriated each fiscal year to pay principal on any bonds issued pursuant to this chapter and any ancillary obligations associated therewith may not exceed the outstanding principal amount of all bonds issued pursuant to this chapter. The amount appropriated each fiscal year to pay interest on any bonds issued pursuant to this chapter and any ancillary obligations associated therewith may not exceed 15 percent per annum of the outstanding amount of all bonds issued pursuant to this chapter. The amount hereby appropriated each year to pay costs,

expenses, rebate, legal, commitment, or other fees and other amounts of any ancillary obligations may not exceed 5 percent per annum of the outstanding amount of all bonds issued pursuant to this chapter. Expenditures pursuant to this section shall reflect the efforts of the state to secure financing that results in the least cost to the state after considering both short-term and long-term financing costs.

SEC. 5. The Department of Finance, on behalf of the Pension Obligation Bond Committee, may pay, from the items of appropriation in the Budget Act of 2003 that support the operations of the department, attorneys' fees and costs included in the agreement to dismiss the appeal in the matter of Pension Obligation Bond Committee, etc. v. Howard Jarvis Taxpayers Assn. (Case No. C045240).

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to enact the statutory changes necessary to implement the Budget Act of 2004, it is necessary that this act take effect immediately.

CHAPTER 216

An act to amend Sections 2558.46, 14041.5, 19325.1, 41203.1, 42238, 42238.44, 42238.146, 42238.23, 69522, 69525, 69529.5, 69766, 69768, 76300, and 84321 of, to amend and repeal Sections 56156.6, 56836.16, and 56836.17 of, to add Sections 56836.165, 56836.173, 66744, 84321.5, and 84760 to, and to repeal and add Section 41207 of, the Education Code, to amend Sections 17581.5 and 68926.3 of the Government Code, to amend Section 270 of the Public Utilities Code, and to repeal Item 6870-101-0959 of Section 2.00 of Chapter 157 of the Statutes of 2003, relating to education finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 11, 2004. Filed with Secretary of State August 11, 2004.]

Senate Bill 1108 contains numerous changes to the law regarding schools consistent with the Budget that I have approved. Foremost among those provisions that I am approving are $110 million for K-12 school district revenue limit equalization and statutory provisions allocating $80 million in equalization funding for community colleges. Included in this bill, of great importance to school districts is the $270 million in funding to reduce cuts made to revenue limits in the 2003–04 Budget, and a new mechanism to ensure that old Proposition 98 debts will be paid off beginning in 2006–07 at a pace the State can afford--$150 million per year. Also included in this bill is $138

million in one-time funds for instructional materials to schools in deciles 1 and 2 of the Academic Performance Index, and $58.4 million to retire old debts for State mandates on schools.

However, I am eliminating three appropriations in his bill totaling over $11 million that we were not part of the agreements I made with legislative leaders on education spending. With these deletions, I am setting aside the funds to focus on the education priorities agreed to with education leaders to provide more flexible funding so local schools can fund their most important needs.

I am deleting a change to law in Section 10 of the bill that adjusts state funding for revenue limits by the savings schools receive from lower Public Employees Retirement System rates. The change in Education Code Section 42238.23 exempts funds provided to regional occupational centers that are joint powers organizations from these reductions that apply to all other educational agencies. This is not equitable and is unwarranted. By deleting this amendment, existing law will be restored, which under the current interpretation of the Department of Education, will reduce the statutory appropriation for school revenue limits equitably to all educational agencies.

I am deleting the $6,000,000 legislative augmentation in subparagraph (A) of paragraph (3) of subdivision (a) of Section 36 to provide Arts Works grants. While I am supportive of arts programs, this small, competitive grant program serves relatively few schools. These funds, which count towards Proposition 98 2003–04 obligations, will be appropriated to schools at a future date. During this time of fiscal difficulties, these funds should be spent for educational priorities agreed to with education leaders to provide more flexible funding so local schools can fund their most important needs.

I am deleting the $5,000,000 legislative augmentation in subparagraph (D) of paragraph (3) of subdivision (a) of Section 36 to start a new cohort for the Academic Improvement & Achievement Act. This small, competitive grant program helps only 12 districts out of the over 1,000 school districts in the state. The program has sufficient funding to complete the existing cohorts, and is set to sunset on July 1, 2005. These funds, which count towards the Proposition 98 obligation for 2003–04, will be appropriated at a future date. During this time of fiscal difficulties, these funds should be spent for educational priorities agreed to with education leaders to provide more flexible funding so local schools can fund their most important needs.

I am signing this bill with the following reductions:

I am deleting Section 10.

I am revising Section 36 as follows:

I reduce the total of the appropriations in subdivision (a) of Section 36 of this bill from $926,527,000 to $915,441,000 by deleting subparagraph (A) of paragraph (3) of subdivision (a), which contains an appropriation for $6,000,000, and by deleting subparagraph (D) of paragraph (3) of subdivision (a), which contains an appropriation for $5,000,000. I am also correcting the total of the appropriation to reflect the sum of the parts.

ARNOLD SCHWARZENEGGER, Governor

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

SECTION 1. Section 2558.46 of the Education Code is amended to read:

2558.46. (a) (1) For the 2003–04 fiscal year, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 1.195 percent deficit factor.

(2) For the 2004–05 and 2005–06 fiscal years, the revenue limit for each county superintendent of schools determined pursuant to this article shall be reduced by a 0.323 percent deficit factor.

(3) For the 2003–04, 2004–05, and 2005–06 fiscal years, the revenue limit for each county superintendent of schools determined pursuant to this article shall be further reduced by a 1.826 percent deficit factor.

(b) In computing the revenue limit for each county superintendent of schools for the 2006–07 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that county superintendent of schools had been determined for the 2003–04, 2004–05, and 2005–06 fiscal years without being reduced by the deficit factors specified in this section.

SEC. 2. Section 14041.5 of the Education Code is amended to read:

14041.5. (a) Notwithstanding subdivision (a) of Section 14041, commencing with the 2002–03 fiscal year, warrants for the principal apportionments for the month of June instead shall be drawn in July of the same calendar year pursuant to the certification made pursuant to Section 41335.

(b) Except as provided in subdivisions (c) and (d), for purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the warrants drawn pursuant to subdivision (a) shall be deemed to be ''General Fund revenues appropriated to school districts,'' as defined in subdivision (c) of Section 41202 for the fiscal year in which the warrants are drawn and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B'' as defined in subdivision (e) of Section 41202, for the fiscal year in which the warrants are drawn.

(c) For the 2003–04 school year, the amount of apportionments for revenue limits computed pursuant to Section 42238 from any of the apportionments made pursuant to Section 14041 that are deemed ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 for the following fiscal year and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B'' as defined in subdivision (e) of Section 41202, for the 2004-05 fiscal year shall be seven hundred twenty-six million two hundred seventy thousand dollars ($726,270,000). Any amount in excess of seven hundred twenty-six million two hundred seventy thousand dollars ($726,270,000) that is apportioned in July of 2004 is deemed ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 for the 2003–04 fiscal year and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes

appropriated pursuant to Article XIII B'' as defined in subdivision (e) of Section 41202, for the 2003–04 fiscal year.

(d) For the 2004–05 school year, and each school year thereafter, the amount of apportionments for revenue limits computed pursuant to Section 42238 from any of the apportionments made pursuant to Section 14041 that are deemed ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 for the following fiscal year and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B'' as defined in subdivision (e) of Section 41202, for the following fiscal year shall be seven hundred fifteen million one hundred eighteen thousand dollars ($715,118,000). Any amount in excess of seven hundred fifteen million one hundred eighteen thousand dollars ($715,118,000) that is apportioned in July of any year is deemed ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 for the prior fiscal year and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B'' as defined in subdivision (e) of Section 41202, for the prior fiscal year.

SEC. 3. Section 19325.1 of the Education Code is amended to read:

19325.1. (a) The State Librarian may operate a telephonic reading system, fund the operation of telephonic reading systems operated by qualifying entities, or both.

(b) Pursuant to an appropriation in the annual Budget Act and in accordance with Section 270 of the Public Utilities Code, the telephonic reading system is to be funded from the Deaf and Disabled Telecommunications Program Administrative Committee Fund.

(c) As used in this section, the following terms have the following meanings, unless otherwise indicated:

(1) ''Telephonic reading system'' means a system operated by the State Librarian or a qualifying entity, whereby a caller can hear the reading of material such as newspapers, magazines, newsletters, broadcast media schedules, transit route and schedule information, and other reference or time-sensitive materials, as determined by the operator of the system.

(2) ''Qualifying entity'' means any agency, instrumentality, or political subdivision of the state or any nonprofit organization whose primary mission is to provide services to people who are blind or visually impaired.

(d) Qualifying entities that were eligible, as of January 1, 2001, to receive funds from the State Librarian relating to the operation of a telephonic reading system may continue to receive funding from the State Librarian.

(e) The State Librarian, in cooperation with qualifying entities, may expand the type and scope of materials available on telephonic reading systems in order to meet the local, regional, or foreign language needs of print-disabled residents of this state. The State Librarian may also expand the scope of services and availability of telephonic reading services by current methods and technologies or by methods and technologies that may be developed. The State Librarian may inform current and potential patrons of the availability of telephonic reading service through appropriate means, including, but not limited to, direct mailings, direct telephonic contact, and public service announcements.

(f) The State Librarian may enter into contracts or other agreements that he or she determines to be appropriate to provide telephonic reading services pursuant to this section.

SEC. 4. Section 41203.1 of the Education Code is amended to read:

41203.1. (a) For the 1990–91 fiscal year and each fiscal year thereafter, allocations calculated pursuant to Section 41203 shall be distributed in accordance with calculations provided in this section. Notwithstanding Section 41203, and for the purposes of this section, school districts, community college districts, and direct elementary and secondary level instructional services provided by the State of California shall be regarded as separate segments of public education, and each of these three segments of public education shall be entitled to receive respective shares of the amount calculated pursuant to Section 41203 as though the calculation made pursuant to subdivision (b) of Section 8 of Article XVI of the California Constitution were to be applied separately to each segment and the base year for the purposes of this calculation under paragraph (1) of subdivision (b) of Section 8 of Article XVI of the California Constitution were based on the 1989–90 fiscal year. Calculations made pursuant to this subdivision shall be made so that each segment of public education is entitled to the greater of the amounts calculated for that segment pursuant to paragraph (1) or (2) of subdivision (b) of Section 8 of Article XVI of the California Constitution.

(b) If the single calculation made pursuant to Section 41203 yields a guaranteed amount of funding that is less than the sum of the amounts calculated pursuant to subdivision (a), then the amount calculated pursuant to Section 41203 shall be prorated for the three segments of public education.

(c) Notwithstanding any other law, this section does not apply to the 1992–93 to 2004–05 fiscal years, inclusive.

SEC. 5. Section 41207 of the Education Code is repealed.

SEC. 6. Section 41207 is added to the Education Code, to read:

41207. (a) Notwithstanding Section 41206, by January 1, 2006, the Superintendent of Public Instruction and the Director of Finance shall

jointly determine the outstanding balance of the minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution for the 1995–96 to 2003–04 fiscal years, inclusive. The Director of Finance shall notify the Governor and Legislature of the amount of the outstanding balance for each fiscal year between the 1995–96 and 2003–04 fiscal years, inclusive, and the total amount of the outstanding balance for those years. This notification does not constitute a certification for purposes of Section 41206.

(b) If the joint determination required pursuant to subdivision (a) is not made for any fiscal year by January 1, 2006, the Controller shall make the determination for that fiscal year or years and shall notify the Governor and Legislature of that determination on or before March 1, 2006. This notification does not constitute a certification for purposes of Section 41206.

(c) For purposes of this section, the outstanding balance of the minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution for a fiscal year is the amount, if any, by which the amount required to be applied by the state for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution, including any maintenance factor that should have been allocated in that fiscal year pursuant to subdivision (e) of Section 8 of Article XVI, exceeds the amount applied by the state for the support of school districts and community college districts for that fiscal year.

(d) Commencing with the 2006–07 fiscal year, the sum of one hundred fifty million dollars ($150,000,000) is hereby annually appropriated from the General Fund to the Controller for allocation to school districts and community college districts for the purpose of discharging in full the outstanding balance of the minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution identified in subdivision (a) or (b) of this section. This annual appropriation shall continue until the Director of Finance reports to the Legislature that the sum of appropriations made and allocated pursuant to this subdivision equals the total outstanding balance of the minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution determined pursuant to subdivision (a) or (b), as applicable.

(1) The amount annually appropriated pursuant to this subdivision shall be allocated to school districts and community college districts in a manner that reflects the proportion of regular average daily attendance in school districts, as defined in subdivision (a) of Section 41209, to

funded full-time equivalent students in community college districts, as those numbers are reported at the time of the second principal apportionment for the fiscal year prior to the fiscal year in which funds are to be received.

(2) The Controller shall allocate funds annually appropriated pursuant to this subdivision to school districts and community college districts based on attendance information provided by the department and Chancellor of the California Community Colleges on August 15 of each year commencing with the 2006–07 fiscal year, unless otherwise provided by the Legislature pursuant to subdivision (g). For purposes of this subdivision a school district includes a county office of education and a charter school.

(e) For purposes of Section 8 of Article XVI of the California Constitution, the amounts appropriated and allocated pursuant to this section shall be applied to the outstanding balance of the minimum funding obligation to school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution for the 1995–96 to 2003–04 fiscal years, inclusive, in chronological order beginning with the 1995–96 fiscal year and shall be deemed to be appropriations made and allocated in the fiscal year in which the deficiencies resulting in the outstanding balance were incurred. When the amount determined to be owed for each fiscal year pursuant to subdivision (a) or (b) is fully appropriated and allocated pursuant to subdivision (d), the data used in the computations made under subdivision (a) or (b) and the total amount owed by the state for the support of school districts and community college districts pursuant to Section 8 of Article XVI of the California Constitution for that fiscal year, including as much of the maintenance factor for that fiscal year determined pursuant to subdivision (d) of Section 8 of Article XVI as has been allocated as required by subdivision (e) of Section 8 of Article XVI by virtue of the payments made under this section, shall be deemed certified for purposes of Section 41206.

(f) Funding received by school districts and community college districts pursuant to this section shall first be deemed to be paid in satisfaction of any outstanding claims pursuant to Section 6 of Article XIII B of the California Constitution for reimbursement of state-mandated local costs for any fiscal year. Notwithstanding any amounts that are deemed, pursuant to this subdivision, to be paid in satisfaction of outstanding claims for reimbursement of state-mandated local costs, the Controller may audit any claim as allowed by law and may reduce any amount owed by a local educational agency pursuant to an audit by reducing amounts owed for any other mandate claims. The Controller shall apply amounts received by each school district or community college district against any balances of unpaid claims for

reimbursement of state-mandated local costs and interest in chronological order beginning with the earliest claim. The Controller shall report to each local educational agency the amounts of any claims and interest that are offset from funds provided pursuant to this section and shall report a summary of the amounts offset for each mandate for each fiscal year to the Department of Finance and the fiscal committees of the Legislature. The governing board of a school district or community college district may expend funds received pursuant to this section in excess of amounts offsetting mandate claims for any other one-time purposes, as determined by the governing board.

(g) The Legislature may specify in the annual Budget Act or other statute other one-time purposes for which the funds appropriated pursuant to this section shall be used so long as those appropriations are made for allocation to school districts or community college districts.

SEC. 7. Section 42238 of the Education Code is amended to read:

42238. (a) For the 1984–85 fiscal year and each fiscal year thereafter, the county superintendent of schools shall determine a revenue limit for each school district in the county pursuant to this section.

(b) The base revenue limit for a fiscal year shall be determined by adding to the base revenue limit for the prior fiscal year the following amounts:

(1) The inflation adjustment specified in Section 42238.1.

(2) For the 1995–96 fiscal year, the equalization adjustment specified in Section 42238.4.

(3) For the 1996–97 fiscal year, the equalization adjustments specified in Sections 42238.41, 42238.42, and 42238.43.

(4) For the 1985–86 fiscal year, the amount received per unit of average daily attendance in the 1984–85 fiscal year pursuant to Section 42238.7.

(5) For the 1985–86, 1986–87, and 1987–88 fiscal years, the amount per unit of average daily attendance received in the prior fiscal year pursuant to Section 42238.8.

(6) For the 2004–05 fiscal year, the equalization adjustment specified in Section 42238.44.

(c) Except for districts subject to subdivision (d), the base revenue limit computed pursuant to subdivision (b) shall be multiplied by the district average daily attendance computed pursuant to Section 42238.5.

(d) (1) For districts for which the number of units of average daily attendance determined pursuant to Section 42238.5 is greater for the current fiscal year than for the 1982–83 fiscal year, compute the following amount, in lieu of the amount computed pursuant to subdivision (c):

(A) Multiply the base revenue limit computed pursuant to subdivision (c) by the average daily attendance computed pursuant to Section 42238.5 for the 1982–83 fiscal year.

(B) Multiply the lesser of the amount in subdivision (c) or 1.05 times the statewide average base revenue limit per unit of average daily attendance for districts of similar type for the current fiscal year by the difference between the average daily attendance computed pursuant to Section 42238.5 for the current and 1982–83 fiscal years.

(C) Add the amounts in subparagraphs (A) and (B).

(2) This subdivision shall become inoperative on July 1, 1998.

(e) For districts electing to compute units of average daily attendance pursuant to paragraph (2) of subdivision (a) of Section 42238.5, the amount computed pursuant to Article 4 (commencing with Section 42280) shall be added to the amount computed in subdivision (c) or (d), as appropriate.

(f) For the 1984–85 fiscal year only, the county superintendent shall reduce the total revenue limit computed in this section by the amount of the decreased employer contributions to the Public Employees' Retirement System resulting from enactment of Chapter 330 of the Statutes of 1982, offset by any increase in those contributions, as of the 1983–84 fiscal year, resulting from subsequent changes in employer contribution rates.

(g) The reduction required by subdivision (f) shall be calculated as follows:

(1) Determine the amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately prior to the enactment of Chapter 330 of the Statutes of 1982 was in effect during the 1983–84 fiscal year.

(2) Subtract from the amount determined in paragraph (1) the greater of subparagraph (A) or (B):

(A) The amount of employer contributions that would have been made in the 1983–84 fiscal year if the applicable Public Employees' Retirement System employer contribution rate in effect immediately after the enactment of Chapter 330 of the Statutes of 1982 was in effect during the 1983–84 fiscal year.

(B) The actual amount of employer contributions made to the Public Employees' Retirement System in the 1983–84 fiscal year.

(3) For purposes of this subdivision, employer contributions to the Public Employees' Retirement System for either of the following shall be excluded from the calculation specified above:

(A) Positions supported totally by federal funds that were subject to supplanting restrictions.

(B) Positions supported, to the extent of employer contributions not exceeding twenty-five thousand dollars ($25,000) by any single educational agency, from a revenue source determined on the basis of equity to be properly excludable from the provisions of this subdivision by the Superintendent of Public Instruction with the approval of the Director of Finance.

(4) For accounting purposes, the reduction made by this subdivision may be reflected as an expenditure from appropriate sources of revenue as directed by the Superintendent of Public Instruction.

(h) The Superintendent of Public Instruction shall apportion to each school district the amount determined in this section less the sum of:

(1) The district's property tax revenue received pursuant to Chapter 3 (commencing with Section 75) and Chapter 6 (commencing with Section 95) of Part 0.5 of the Revenue and Taxation Code.

(2) The amount, if any, received pursuant to Part 18.5 (commencing with Section 38101) of the Revenue and Taxation Code.

(3) The amount, if any, received pursuant to Chapter 3 (commencing with Section 16140) of the Government Code.

(4) Prior years' taxes and taxes on the unsecured roll.

(5) Fifty percent of the amount received pursuant to Section 41603.

(6) The amount, if any, received pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code), except for any amount received pursuant to Section 33401 or 33676 of the Health and Safety Code that is used for land acquisition, facility construction, reconstruction, or remodeling, or deferred maintenance, except for any amount received pursuant to Section 33492.15, paragraph (4) of subdivision (a) of Section 33607.5, or Section 33607.7 of the Health and Safety Code that is allocated exclusively for educational facilities.

(7) For a unified school district, other than a unified school district that has converted all of its schools to charter status pursuant to Section 47606, the amount of statewide average general-purpose funding per unit of average daily attendance received by school districts for each of four grade level ranges, as computed by the department pursuant to Section 47633, multiplied by the average daily attendance, in corresponding grade level ranges, of any pupils who attend charter schools funded pursuant to Chapter 6 (commencing with Section 47630) of Part 26.8 for which the district is the sponsoring local educational agency, as defined in Section 47632, and who reside in and would otherwise have been eligible to attend a noncharter school of the district.

(i) A transfer of seventh and eighth grade pupils between an elementary school district and a high school district shall not result in the receiving district receiving a revenue limit apportionment for those

pupils that exceeds 105 percent of the statewide average revenue limit for the type and size of the receiving school district.

SEC. 8. Section 42238.44 of the Education Code is amended to read:

42238.44. (a) This section shall be known and may be cited as, the Fairness in Education Funding Act.

(b) (1) For the 2004–05 fiscal year, the Superintendent of Public Instruction shall compute an equalization adjustment for each school district, so that the 2003–04 base revenue limit per unit of average daily attendance of a district is not less than the 2003–04 base revenue limit per unit of average daily attendance above which fall not more than 10 percent of the total statewide units of average daily attendance for each category of school district set forth in subdivision (c).

(2) For purposes of this section, the district base revenue limit and the statewide average base revenue limit shall not include any amounts attributable to Section 45023.4, 46200, or 46201.

(c) Subdivision (b) shall apply to the following school districts, which shall be grouped according to size and type as follows:

District	ADA
Elementary	less than 101
Elementary	more than 100
High School	less than 301
High School	more than 300
Unified	less than 1,501
Unified	more than 1,500

(d) The Superintendent of Public Instruction shall compute a revenue limit equalization adjustment for each school district's base revenue limit per unit of average daily attendance as follows:

(1) Multiply the amount computed for each school district pursuant to subdivision (b) by the average daily attendance used to calculate the revenue limit for the 2004–05 fiscal year of a district.

(2) Divide the amount appropriated for purposes of this section for the 2004–05 fiscal year by the statewide sum of the amount computed pursuant to paragraph (1).

(3) Multiply the amount computed for the school district pursuant to paragraph (1) of subdivision (b) by the amount computed pursuant to paragraph (2).

(e) (1) For the purposes of this section, the 2003–04 statewide 90th percentile base revenue limit determined pursuant to paragraph (1) of subdivision (b), and the fraction computed pursuant to paragraph (2) of subdivision (d) for the 2003–04 second principal apportionment, shall be final, and shall not be recalculated at subsequent apportionments. The

fraction computed pursuant to paragraph (2) of subdivision (d) shall not, under any circumstances, exceed 1.00. For purposes of determining the size of a school district pursuant to subdivision (c), county superintendents of schools, in conjunction with the Superintendent of Public Instruction, shall use school district revenue limit average daily attendance for the 2003–04 fiscal year as determined pursuant to Section 42238.5 and Article 4 (commencing with Section 42280).

(2) For the purposes of calculating the size of a school district pursuant to subdivision (c), the Superintendent of Public Instruction shall include units of average daily attendance of any charter school for which the school district is the chartering agency.

(3) For the purposes of computing the target amounts pursuant to subdivision (b), the Superintendent of Public Instruction shall count all charter school average daily attendance toward the average daily attendance of the school district that is the chartering agency.

SEC. 9. Section 42238.146 of the Education Code is amended to read:

42238.146. (a) (1) For the 2003–04 fiscal year, the revenue limit for each school district determined pursuant to this article shall be reduced by a 1.198 percent deficit factor.

(2) For the 2004–05 and 2005–06 fiscal years, the revenue limit for each school district determined pursuant to this article shall be reduced by a 0.323 percent deficit factor.

(3) For the 2003–04, 2004–05, and 2005–06 fiscal years, the revenue limit for each school district determined pursuant to this article shall be further reduced by a 1.826 percent deficit factor.

(b) In computing the revenue limit for each school district for the 2006–07 fiscal year pursuant to this article, the revenue limit shall be determined as if the revenue limit for that school district had been determined for the 2003–04, 2004–05, and 2005–06 fiscal years without being reduced by the deficit factors specified in this section.

SEC. 10. Section 42238.23 of the Education Code is amended to read:

42238.23. (a) Notwithstanding any other provision of law, persons providing services to local educational agencies through use of a joint powers authority involving the local educational agency who would, in absence of the joint powers authority, otherwise be considered school employees and subject to the Public Employees' Retirement System rate reduction to revenue limits authorized in Section 42238.12, shall not be excluded from the calculations of the Public Employees' Retirement System reduction authorized in that section.

(b) This section does not apply to persons providing services to a regional occupational center or program that operates as a joint powers agency pursuant to Section 52301.

SEC. 11. Section 56156.6 of the Education Code is amended to read:

56156.6. (a) If the district in which the licensed children's institution or foster family home is located is also the district of residence of the parent of the individual with exceptional needs, and if the parent retains legal responsibility for the child's education, Sections 56836.16 and 56836.17 shall not apply.

(b) This section shall become inoperative on June 30, 2004, and, as of July 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before July 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 12. 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.

(d) This section shall become inoperative on June 30, 2004, and, as of July 1, 2006, is repealed, unless a later enacted statute that becomes operative on or before July 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 13. Section 56836.165 is added to the Education Code, to read:

56836.165. (a) For the 2004–05 fiscal year and each fiscal year thereafter, the superintendent shall calculate for each special education local plan area an amount based on (1) the number of children and youth residing in foster family homes and foster family agencies, (2) the licensed capacity of group homes licensed by the State Department of Social Services, and (3) the number of children and youth ages 3 through 21 referred by the State Department of Developmental Services who are residing in skilled nursing facilities or intermediate care facilities licensed by the State Department of Health Services and the number of youth ages 18 through 21 referred by the State Department of Developmental Services who are residing in community care facilities licensed by the State Department of Social Services.

(b) The department shall assign each facility described in paragraphs (1), (2), and (3) of subdivision (a) a severity rating. The severity ratings shall be on a scale from 1 to 14. Foster family homes shall be assigned a severity rating of 1. Foster family agencies shall be assigned a severity rating of 2. Facilities described in paragraph (2) of subdivision (a) shall be assigned the same severity rating as its State Department of Social Services rate classification level. For facilities described in paragraph (3) of subdivision (a), skilled nursing facilities shall be assigned a severity rating of 14, intermediate care facilities shall be assigned a severity rating of 11, and community care facilities shall be assigned a severity rating of 8.

(c) (1) The department shall establish a ''bed allowance'' for each severity level. For the 2004–05 fiscal year, the bed allowance shall be calculated as described in paragraph (2). For the 2005–06 fiscal year and each fiscal year thereafter, the department shall increase the bed

allowance by the inflation adjustment computed pursuant to Section 42238.1. The department shall not establish a bed allowance for any facility defined in paragraphs (2) and (3) of subdivision (a) if it is not licensed by the State Department of Social Services or the State Department of Health Services.

(2) (A) The bed allowance for severity level 1 shall be five hundred two dollars ($502).

(B) The bed allowance for severity level 2 shall be six hundred ten dollars ($610).

(C) The bed allowance for severity level 3 shall be one thousand four hundred thirty-four dollars ($1,434).

(D) The bed allowance for severity level 4 shall be one thousand six hundred forty-nine dollars ($1,649).

(E) The bed allowance for severity level 5 shall be one thousand eight hundred sixty-five dollars ($1,865).

(F) The bed allowance for severity level 6 shall be two thousand eighty dollars ($2,080).

(G) The bed allowance for severity level 7 shall be two thousand two hundred ninety-five dollars ($2,295).

(H) The bed allowance for severity level 8 shall be two thousand five hundred ten dollars ($2,510).

(I) The bed allowance for severity level 9 shall be five thousand four hundred fifty-one dollars ($5,451).

(J) The bed allowance for severity level 10 shall be five thousand eight hundred eighty-one dollars ($5,881).

(K) The bed allowance for severity level 11 shall be nine thousand four hundred sixty-seven dollars ($9,467).

(L) The bed allowance for severity level 12 shall be thirteen thousand four hundred eighty-three dollars ($13,483).

(M) The bed allowance for severity level 13 shall be fourteen thousand three hundred forty-three dollars ($14,343).

(N) The bed allowance for severity level 14 shall be twenty thousand eighty-one dollars ($20,081).

(d) (1) For each fiscal year, the department shall calculate an out-of-home care funding amount for each special education local plan area as the sum of amounts computed pursuant to paragraphs (2), (3), and (4). The State Department of Social Services and the State Department of Developmental Services shall provide the State Department of Education with the residential counts identified in paragraphs (2), (3), and (4).

(2) The number of children and youth residing on April 1 in foster family homes and foster family agencies located in each special education local plan area times the appropriate bed allowance.

(3) The capacity on April 1 of each group home licensed by the State Department of Social Services located in each special education local plan area times the appropriate bed allowance.

(4) The number on April 1 of children and youth (A) ages 3 through 21 referred by the State Department of Developmental Services who are residing in skilled nursing facilities and intermediate care facilities licensed by the State Department of Health Services located in each special education local plan area times the appropriate bed allowance, and (B) ages 18 through 21 referred by the State Department of Developmental Services who are residing in community care facilities licensed by the State Department of Social Services located in each special education local plan area times the appropriate bed allowance.

SEC. 14. 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.

(d) This section shall become inoperative on June 30, 2004, and, as of July 1, 2006, is repealed, unless a later enacted statute that becomes operative on or before July 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 15. Section 56836.173 is added to the Education Code, to read:

56836.173. (a) The department shall apportion to each special education local plan area the amount determined in this section.

(b) For the 2004–05 and 2005–06 fiscal years, the amount apportioned shall be as follows:

(1) If the out-of-home care funding amount calculated for a special education local plan area is less than or equal to the amount a special education local plan area received pursuant to former Sections 56836.16 and 56836.17 for the 2002–03 fiscal year, the special education local plan area shall receive the same amount it received for the 2002–03 fiscal year. For purposes of this section, the amount of funding received by a special education local plan area for the 2002–03 fiscal year shall be based on the annual certification of the 2002–03 fiscal year.

(2) For special education local plan areas other than those funded through paragraph (1), special education local plan areas shall receive the amount received for the 2002–03 fiscal year plus the amount calculated in paragraph (3).

(3) For special education local plan areas other than those funded through paragraph (1), each special education local plan area shall also receive the difference between the out-of-home care funding amount for the special education local plan area and the amount received for the 2002–03 fiscal year for that special education local plan area divided by the sum of the difference between the out-of-home care funding amount and the amount received in the 2002–03 fiscal year for all special education local plan areas times the amount of funds provided for Section 56836.165 in the annual Budget Act that has not been allocated in paragraph (1) or (2).

(c) For the 2006–07 fiscal year, the amount apportioned shall be as follows:

(1) If the out-of-home care funding amount calculated for a special education local plan area for the 2006–07 fiscal year is less than or equal to the amount a special education local plan area received for the 2005–06 fiscal year, the special education local plan area shall receive the same amount it received for the 2005–06 fiscal year less 20 percent of the difference between the amount received for the 2005–06 fiscal year and the out-of-home care funding amount computed for the 2006–07 fiscal year.

(2) For special education local plan areas other than those funded through paragraph (1), special education local plan areas shall receive the amount received for the 2005–06 fiscal year.

(3) For special education local plan areas other than those funded through paragraph (1), each special education local plan area shall also receive the difference between the out-of-home care funding amount for that special education local plan area and the amount received for the 2005–06 fiscal year for that special education local plan area divided by the sum of the difference between the out-of-home care funding amount and the amount received in the 2005–06 fiscal year for all special education local plan areas times the amount of funds provided for

Section 56836.165 in the annual Budget Act that has not been allocated in paragraph (1) or (2).

(d) For the 2007–08 fiscal year, the amount apportioned shall be as follows:

(1) If the out-of-home care funding amount calculated for a special education local plan area for the 2007–08 fiscal year is less than or equal to the amount a special education local plan area received for the 2006–07 fiscal year, the special education local plan area shall receive the same amount it received for the 2006–07 fiscal year less 25 percent of the difference between the amount received for the 2006–07 fiscal year and the out-of-home care funding amount computed for the 2007–08 fiscal year.

(2) For special education local plan areas other than those funded through paragraph (1), special education local plan areas shall receive the amount received for the 2006–07 fiscal year.

(3) For special education local plan areas other than those funded through paragraph (1), each special education local plan area shall also receive the difference between the out-of-home care funding amount for that special education local plan area and the amount received for the 2006–07 fiscal year for that special education local plan area divided by the sum of the difference between the out-of-home care funding amount and the amount received in the 2006–07 fiscal year for all special education local plan areas times the amount of funds provided for Section 56836.165 in the annual Budget Act that has not been allocated in paragraph (1) or (2).

(e) For the 2008–09 fiscal year, the amount apportioned shall be as follows:

(1) If the out-of-home care funding amount calculated for a special education local plan area for the 2008–09 fiscal year is less than or equal to the amount a special education local plan area received for the 2007–08 fiscal year, the special education local plan area shall receive the same amount it received for the 2007–08 fiscal year less 33 percent of the difference between the amount received for the 2007–08 fiscal year and the out-of-home care funding amount computed for the 2008–09 fiscal year.

(2) For special education local plan areas other than those funded through paragraph (1), special education local plan areas shall receive the amount received for the 2007–08 fiscal year.

(3) For special education local plan areas other than those funded through paragraph (1), each special education local plan area shall also receive the difference between the out-of-home care funding amount for that special education local plan area and the amount received for the 2007–08 fiscal year for that special education local plan area divided by the sum of the difference between the out-of-home care funding amount

and the amount received in the 2007–08 fiscal year for all special education local plan areas times the amount of funds provided for Section 56836.165 in the annual Budget Act that has not been allocated in paragraph (1) or (2).

(f) For the 2009–10 fiscal year, the amount apportioned shall be as follows:

(1) If the out-of-home care funding amount calculated for a special education local plan area for the 2009–10 fiscal year is less than or equal to the amount a special education local plan area received for the 2008–09 fiscal year, the special education local plan area shall receive the same amount it received for the 2008–09 fiscal year less 50 percent of the difference between the amount received for the 2008–09 fiscal year and the out-of-home care funding amount computed for the 2009–10 fiscal year.

(2) For special education local plan areas other than those funded through paragraph (1), special education local plan areas shall receive the amount received for the 2008–09 fiscal year.

(3) For special education local plan areas other than those funded through paragraph (1), each special education local plan area shall also receive the difference between the out-of-home care funding amount for that special education local plan area and the amount received for the 2008–09 fiscal year for that special education local plan area divided by the sum of the difference between the out-of-home care funding amount and the amount received in the 2008–09 fiscal year for all special education local plan areas times the amount of funds provided for Section 56836.165 in the annual Budget Act that has not been allocated in paragraph (1) or (2).

(g) Beginning in the 2010–11 fiscal year, the amount provided to special education local plan areas shall be equal to the amount calculated pursuant to Section 56836.165. If the sum of the amounts for all special education local plan areas exceeds the Budget Act appropriation for this purpose, the department shall apply proportionate reductions to all special education local plan areas.

SEC. 16. Section 66744 is added to the Education Code, to read:

66744. (a) (1) Commencing with the 2004–05 academic year, and each academic year thereafter, the Trustees of the California State University shall establish a dual admissions program for eligible freshman applicants. Under this program, eligible freshman applicants may be offered the opportunity to enter into a dual admissions agreement with the California State University.

(2) Student participation in the dual admissions program under this subdivision is voluntary. It is the intent of the Legislature that the incentives provided in paragraph (3) shall encourage students otherwise eligible for admission to the California State University to attend a

campus of the California Community Colleges for their lower-division coursework.

(3) The agreement shall include, but is not necessarily limited to, all of the following incentives:

(A) A guarantee that the student will be admitted to a California State University campus during a future academic year, provided that the student successfully completes lower-division transfer requirements at a campus of the California Community Colleges.

(B) Notwithstanding Section 76300, for each student who enrolls under this subdivision at a campus of the California Community Colleges pursuant to the dual admissions program in the 2004–05 academic year, a guarantee that any campus of the California Community Colleges shall waive fees for up to two academic years, irrespective of financial need, while that student is enrolled at that campus.

(C) For each student who enrolls, under this subdivision, at a campus of the California Community Colleges pursuant to the dual admissions program in the 2005–06 academic year, or any academic year thereafter, a guarantee that any campus of the California Community Colleges shall waive fees for each financially needy student. For the purposes of this paragraph, financial need shall be determined by the standards established by the Board of Governors of the California Community Colleges in Section 58620 of Title 5 of the California Code of Regulations or in a successor regulation.

(D) A guarantee that the student will receive counseling services from the California State University to ensure that the student is informed of the appropriate course requirements to be eligible for transfer to the California State University, and is also informed of the various financial aid options.

(4) The Chancellor of the California State University shall annually submit to the Director of Finance, as part of the budget preparation process, an estimate of the number of students expected to participate, under this subdivision, in the dual admissions program in the succeeding academic year.

(b) (1) Commencing with the 2004–05 academic year, and each academic year thereafter, the Legislature requests that the Regents of the University of California establish a dual admissions program for eligible freshman applicants. Under this program, eligible freshman applicants may be offered the opportunity to enter into a dual admissions agreement with the University of California.

(2) Student participation in the dual admissions program under this subdivision is voluntary. It is the intent of the Legislature that the incentives provided in paragraph (3) shall encourage students otherwise eligible for admission to the University of California to attend a campus

of the California Community Colleges for their lower-division coursework.

(3) The agreement shall include, but is not necessarily limited to, all of the following incentives:

(A) A guarantee that the student will be admitted to a University of California campus during a future academic year, provided that the student successfully completes lower-division transfer requirements at a campus of the California Community Colleges.

(B) Notwithstanding Section 76300, for each student who enrolls under this subdivision at a campus of the California Community Colleges pursuant to the dual admissions program in the 2004–05 academic year, a guarantee that any campus of the California Community Colleges shall waive fees for up to two academic years, irrespective of financial need, while that student is enrolled at that campus.

(C) For each student who enrolls, under this subdivision, at a campus of the California Community Colleges pursuant to the dual admissions program in the 2005–06 academic year, or any academic year thereafter, a guarantee that any campus of the California Community Colleges shall waive fees for each financially needy student. For the purposes of this paragraph, financial need shall be determined by the standards established by the Board of Governors of the California Community Colleges in Section 58620 of Title 5 of the California Code of Regulations or in a successor regulation.

(D) A guarantee that the student will receive counseling services from the University of California to ensure that the student is informed of the appropriate course requirements to be eligible for transfer to the University of California, and is also informed of the various financial aid options.

(4) The President of the University of California is requested to annually submit to the Director of Finance, as part of the budget preparation process, an estimate of the number of students expected to participate, under this subdivision, in the dual admissions program in the succeeding academic year.

SEC. 17. Section 69522 of the Education Code is amended to read:

69522. (a) The commission may establish an auxiliary organization for the purpose of providing operational and administrative services for the commission's participation in the Federal Family Education Loan Program, or for other activities approved by the commission and determined by the commission to be all of the following:

(1) Related to student financial aid.

(2) Consistent with the general mission of the commission.

(3) Consistent with the purposes of the federal Higher Education Act of 1965 (Public Law 89-329) and amendments thereto.

(b) The auxiliary organization shall be established and maintained as a nonprofit public benefit corporation subject to the Nonprofit Public Benefit Corporation Law in Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, except that, if there is a conflict between this article and the Nonprofit Public Benefit Corporation Law, this article shall prevail.

(c) The commission shall maintain its responsibility for financial aid program administration, policy leadership program evaluation, and information development and coordination. The auxiliary organization shall provide operational and support services essential to the administration of the Federal Family Education Loan Program and other permitted activities that are related to student financial aid, if those services are determined by the commission to be consistent with the overall mission of the commission. The implementation and effectuation of the auxiliary organization shall be carried out so as to enhance the administration and delivery of commission programs and services. The commission shall conduct regular performance evaluations of the operation of auxiliary organizations in furtherance of its fiscal and fiduciary responsibilities for approved programs.

(d) The operations of the auxiliary organization shall be conducted in conformity with an operating agreement approved annually by the commission. On and after January 1, 2002, the commission may approve an operating agreement for a period not to exceed five years. Prior to approval, the commission shall provide the proposed operating agreement to the Department of Finance for its review and comment. The operations of the auxiliary organization shall be limited to services prescribed in that agreement. Prior to approval of any amendment to an existing operating agreement or any new operating agreement with an auxiliary organization or subsidiary auxiliary organization for the purpose of delineating new services or activities authorized pursuant to subdivision (a), the commission shall provide the Director of Finance and the Joint Legislative Budget Committee with at least 45 days advance notice in writing that includes a description of the proposed operating agreement. If the Director of Finance or the Joint Legislative Budget Committee notifies the commission regarding issues of concern with the proposed operating agreement, the commission shall convene a meeting of appropriate representatives from the commission, the Department of Finance, and the Legislature to resolve those issues.

(e) The commission shall oversee the development and operations of the auxiliary organization in a manner that ensures broad public input and consultation with representatives of the financial aid community, colleges and universities, and state agencies.

SEC. 18. Section 69525 of the Education Code is amended to read:

69525. (a) The auxiliary organization established pursuant to Section 69522 shall be governed by a board of directors nominated and appointed by the commission. One member of the board of directors shall be an employee of the auxiliary organization, and one member of the board of directors shall be a student enrolled in a California public or private postsecondary educational institution. The commission shall determine the composition of the remainder of the board of directors, including both the size and categories of membership of the board.

(b) The board of directors shall, during each fiscal year, hold at least one business meeting each quarter. The board of directors shall have the benefit of the advice and counsel of at least one attorney admitted to practice law in this state and at least one licensed certified public accountant. Neither the attorney nor the certified public accountant need be members of the board.

(c) No member of the board of directors shall be financially interested in any contract or other transaction entered into by the board of which he or she is a member, and, except as provided in subdivision (d), any contract or transaction entered into in violation of this subdivision is void.

(d) No contract or other transaction entered into by the board of directors is void under subdivision (c), nor shall any member of that board be disqualified or deemed guilty of misconduct in office under those provisions, if both of the following circumstances exist:

(1) The member's financial interest is disclosed or known to the board of directors and noted in the minutes, and the board of directors thereafter authorizes, approves, or ratifies the contract or transaction in good faith by a vote sufficient for the purpose without counting the vote or votes of that financially interested member or members.

(2) The contract or transaction is just and reasonable as to the auxiliary organization at the time it is authorized or approved.

(e) Subdivision (d) does not apply if any of the following circumstances exists:

(1) The contract or transaction is between the auxiliary organization and a member of the board of directors.

(2) The contract or transaction is between the auxiliary organization and a partnership or unincorporated association of which any member of the board of directors is a partner or in which he or she is the owner or holder, directly or indirectly, of a proprietorship interest.

(3) The contract or transaction is between the auxiliary organization and a corporation in which any member of the board of directors is the owner or holder, directly or indirectly, of 5 percent or more of the outstanding common stock.

(4) A member of the board of directors is interested in a contract or transaction within the meaning of subdivision (c) and, without first disclosing that interest to the board of directors at a public meeting of the board, influences or attempts to influence another member or members of the board to enter into the contract or transaction.

(f) It is unlawful for any person to utilize any information, not a matter of public record, that is received by him or her by reason of his or her membership on the board of directors, for personal pecuniary gain, regardless of whether he or she is or is not a member of the board of directors at the time that gain is realized.

(g) (1) The board of directors of the auxiliary organization shall conduct its business in public meetings in accordance with the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

(2) Notwithstanding paragraph (1), the board of directors of the auxiliary organization may hold a closed session to consider a matter of a proprietary nature the discussion of which would disclose a trade secret or proprietary business information that could potentially cause economic harm to the auxiliary organization or cause it to violate an agreement with a third party to maintain the information in confidence if that agreement was made in good faith and for reasonable business purposes.

(3) Notwithstanding any other law, the commission may hold a closed session to consider a matter that may properly be considered in closed session by the board of directors of the auxiliary organization pursuant to paragraph (2).

SEC. 19. Section 69529.5 of the Education Code is amended to read:

69529.5. (a) The commission shall report the following information to the Legislature on April 1 of each year, with respect to the operation of the auxiliary organization:

(1) A description of the services provided by the auxiliary organization.

(2) The auxiliary organization's annual budget, funded activities, and personnel, including the sources of revenue available to fund its operations.

(3) Descriptions of changes made in the delivery of loans to California students and enhancements to programs and activities administered by the commission. The descriptions shall reflect all changes, both positive and negative.

(4) The level of compensation of managers and executives of the auxiliary organization.

(b) Commencing on April 1, 2005, and on April 1 of each year, ending on April 1, 2010, the commission shall specifically describe the actions taken, and report the costs incurred and the revenues realized, by the auxiliary organization in loan origination, disbursement services, loan servicing and repayment, secondary market, and private lender activities that the auxiliary organization undertakes pursuant to subdivision (a) of Section 69522.

SEC. 20. Section 69766 of the Education Code is amended to read:

69766. (a) The Federal Student Loan Reserve Fund and the Student Loan Operating Fund are hereby created in the State Treasury. On January 1, 2000, the State Guaranteed Loan Reserve Fund shall cease to exist, and funds deposited, or required to be deposited in that fund, shall be transferred to the Federal Student Loan Reserve Fund or to the Student Loan Operating Fund and allocated to those funds in accordance with the requirements of federal law.

(b) All money received for the purposes of this article from federal, state or local governments, including any money deposited in the State Guaranteed Loan Reserve Fund, or from other private or public sources, shall be deposited in the Federal Student Loan Reserve Fund or the Student Loan Operating Fund and allocated to those funds in accordance with the requirements of federal law. Funds deposited in the Federal Student Loan Reserve Fund or the Student Loan Operating Fund are not part of the General Fund, as defined in Section 16300 of the Government Code. No moneys from the General Fund shall be deposited in the Federal Student Loan Reserve Fund or the Student Loan Operating Fund.

(c) The contents of the Federal Student Loan Reserve Fund are federal funds, administered in accordance with federal laws and regulations. The contents of the Student Loan Operating Fund are state funds within the custody and control of the Student Aid Commission.

(d) Notwithstanding Section 13340 of the Government Code, all moneys deposited in the Federal Student Loan Reserve Fund and the Student Loan Operating Fund are hereby continuously appropriated, without regard to fiscal years, for purposes of this article. The continuous appropriation made by this section shall be available to assume the obligation under any outstanding budget act appropriation from the State Guaranteed Loan Reserve Fund as it existed prior to January 1, 2000.

(e) The total amount of all outstanding debts, obligations, and liabilities that may be incurred or created under this article or under Article 2.5 (commencing with Section 69522), including any obligation to repay to the United States any funds provided under Title IV of the ''Higher Education Act of 1965,'' and extensions thereof or amendments thereto, or any similar act of Congress, is limited to the amount contained in the Federal Student Loan Reserve Fund or the Student Loan

Operating Fund, and the state shall not be liable to the United States, or to any other person or entity, beyond the amount contained in the Federal Student Loan Reserve Fund or the Student Loan Operating Fund for any debts, obligations, and liabilities.

SEC. 21. Section 69768 of the Education Code is amended to read:

69768. (a) The funds in the Federal Student Loan Reserve Fund and the Student Loan Operating Fund shall be paid out by the State Treasurer on warrants drawn by the Controller, or through a transfer between the Federal Student Loan Reserve Fund and the Student Loan Operating Fund, and requisitioned by the commission in carrying out the purposes of this article and the federal act.

(b) The commission is hereby authorized to make advance payments from the Student Loan Operating Fund to the auxiliary organization for services rendered to the commission under Article 2.5 (commencing with Section 69522). The commission is hereby authorized to make advance payments from the Student Loan Operating Fund to the auxiliary organization for the purpose of providing funding necessary for other permitted student financial aid activities approved by the commission pursuant to a business plan adopted by the auxiliary organization and approved by the commission, provided the commission first provides the Director of Finance and the Joint Legislative Budget Committee with at least 45 days advance notice in writing that includes the amount proposed to be transferred and a description of the approved student financial aid activities and related expenditures to be undertaken. If the Director of Finance or the Joint Legislative Budget Committee notifies the commission regarding issues of concern with the proposed transfer of funds, the commission shall convene a meeting of appropriate representatives of the commission, the Department of Finance, and the Legislature to resolve those issues. Notwithstanding any other law, advance payments to the auxiliary organization and any fees charged by the auxiliary organization for services rendered to the commission pursuant to an operating agreement may be deposited with a private financial institution.

SEC. 22. Section 76300 of the Education Code is amended to read:

76300. (a) The governing board of each community college district shall charge each student a fee pursuant to this section.

(b) (1) The fee prescribed by this section shall be eighteen dollars ($18) per unit per semester, effective with the fall term of the 2003–04 academic year.

(2) Notwithstanding paragraph (1), the fee prescribed by this section shall be twenty-six dollars ($26) per unit per semester, effective with the fall term of the 2004–05 academic year.

(3) The chancellor shall proportionately adjust the amount of the fee for term lengths based upon a quarter system and also shall

proportionately adjust the amount of the fee for summer sessions, intersessions, and other short-term courses. In making these adjustments, the chancellor may round the per unit fee and the per term or per session fee to the nearest dollar.

(c) For the purposes of computing apportionments to community college districts pursuant to Section 84750, the chancellor shall subtract, from the total revenue owed to each district, 98 percent of the revenues received by districts from charging a fee pursuant to this section.

(d) The chancellor shall reduce apportionments by up to 10 percent to any district that does not collect the fees prescribed by this section.

(e) The fee requirement does not apply to any of the following:

(1) Students enrolled in the noncredit courses designated by Section 84757.

(2) California State University or University of California students enrolled in remedial classes provided by a community college district on a campus of the University of California or a campus of the California State University, for whom the district claims an attendance apportionment pursuant to an agreement between the district and the California State University or the University of California.

(3) Students enrolled in credit contract education courses pursuant to Section 78021, if the entire cost of the course, including administrative costs, is paid by the public or private agency, corporation, or association with which the district is contracting and if these students are not included in the calculation of the full-time equivalent students (FTES) of that district.

(f) The governing board of a community college district may exempt special part-time students admitted pursuant to Section 76001 from the fee requirement.

(g) (1) The fee requirements of this section shall be waived for any student who, at the time of enrollment, is a recipient of benefits under the Temporary Assistance to Needy Families program, the Supplemental Security Income/State Supplementary Program, or a general assistance program or has demonstrated financial need in accordance with the methodology set forth in federal law or regulation for determining the expected family contribution of students seeking financial aid.

(2) The governing board of a community college district also shall waive the fee requirements of this section for any student who demonstrates eligibility according to income standards established by the board of governors and contained in Section 58620 of Title 5 of the California Code of Regulations.

(h) The fee requirements of this section shall be waived for any student who, at the time of enrollment is a dependent, or surviving spouse who has not remarried, of any member of the California National

Guard who, in the line of duty and while in the active service of the state, was killed, died of a disability resulting from an event that occurred while in the active service of the state, or is permanently disabled as a result of an event that occurred while in the active service of the state. ''Active service of the state,'' for the purposes of this subdivision, refers to a member of the California National Guard activated pursuant to Section 146 of the Military and Veterans Code.

(i) The fee requirements of this section shall be waived for any student who is the surviving spouse or the child, natural or adopted, of a deceased person who met all of the requirements of Section 68120.

(j) The fee requirements of this section shall be waived for any student in an undergraduate program, including a student who has previously graduated from another undergraduate or graduate program, who is the dependent of any individual killed in the September 11, 2001, terrorist attacks on the World Trade Center and the Pentagon or the crash of United Airlines Flight 93 in southwestern Pennsylvania, if that dependent meets the financial need requirements set forth in Section 69432.7 for the Cal Grant A Program and either of the following apply:

(1) The dependent was a resident of California on September 11, 2001.

(2) The individual killed in the attacks was a resident of California on September 11, 2001.

(k) A determination of whether a person is a resident of California on September 11, 2001, for purposes of subdivision (j) shall be based on the criteria set forth in Chapter 1 (commencing with Section 68000) of Part 41 for determining nonresident and resident tuition.

(*l*) (1) ''Dependent,'' for purposes of subdivision (j), is a person who, because of his or her relationship to an individual killed as a result of injuries sustained during the terrorist attacks of September 11, 2001, qualifies for compensation under the federal September 11th Victim Compensation Fund of 2001 (Title IV (commencing with Section 401) of Public Law 107-42).

(2) A dependent who is the surviving spouse of an individual killed in terrorist attacks of September 11, 2001, is entitled to the waivers provided in this section until January 1, 2013.

(3) A dependent who is the surviving child, natural or adopted, of an individual killed in the terrorist attacks of September 11, 2001, is entitled to the waivers under subdivision (j) until that person attains the age of 30 years.

(4) A dependent of an individual killed in the terrorist attacks of September 11, 2001, who is determined to be eligible by the California Victim Compensation and Government Claims Board, is also entitled to the waivers provided in this section until January 1, 2013.

(m) (1) It is the intent of the Legislature that sufficient funds be provided to support the provision of a fee waiver for every student who demonstrates eligibility pursuant to subdivisions (g) to (j), inclusive.

(2) From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to 2 percent of the fees waived pursuant to subdivisions (g) to (j), inclusive. From funds provided in the annual Budget Act, the board of governors shall allocate to community college districts, pursuant to this subdivision, an amount equal to ninety-one cents ($0.91) per credit unit waived pursuant to subdivisions (g) to (j), inclusive, for determination of financial need and delivery of student financial aid services, on the basis of the number of students for whom fees are waived. Funds allocated to a community college district for determination of financial need and delivery of student financial aid services shall supplement, and shall not supplant, the level of funds allocated for the administration of student financial aid programs during the 1992–93 fiscal year.

(n) The board of governors shall adopt regulations implementing this section.

SEC. 23. Section 84321 of the Education Code is amended to read:

84321. (a) Notwithstanding any other law, for the 2003–04 fiscal year, warrants for the principal apportionments for the month of June, for general apportionments in the amount of one hundred fifty million dollars ($150,000,000) and for the Partnership for Excellence in the amount of fifty million dollars ($50,000,000), shall instead be drawn in July of the same calendar year pursuant to the certification made under Section 84320.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the warrants drawn pursuant to subdivision (a) shall be deemed to be ''General Fund revenues appropriated for community college districts,'' as defined in subdivision (d) of Section 41202, for the fiscal year in which the warrants are drawn, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202, for the fiscal year in which the warrants are drawn.

SEC. 24. Section 84321.5 is added to the Education Code, to read:

84321.5. (a) Notwithstanding any other provision of law, commencing with the 2004–05 fiscal year, warrants for the principal apportionments for the month of June, for general apportionments in the amount of two hundred million dollars ($200,000,000), shall instead be drawn in July of the same calendar year pursuant to the certification made under Section 84320.

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the warrants drawn pursuant to subdivision (a) shall be deemed to be ''General Fund revenues appropriated for community college districts,'' as defined in subdivision (d) of Section 41202, for the fiscal year in which the warrants are drawn, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202, for the fiscal year in which the warrants are drawn.

SEC. 25. Section 84760 is added to the Education Code, to read:

84760. Notwithstanding any other law:

(a) (1) Equalization funds appropriated in the annual Budget Act shall be allocated to districts in accordance with this section. These funds shall not be allocated to any district whose total local property taxes and student fee revenues exceed the revenue limit for that district under program-based funding, unless the district's funded per-credit full-time equivalent students (FTES) revenue derived from these revenue sources falls below the 90th percentile in funding per-credit FTES for comparably sized districts, as defined in subdivision (b).

(2) Funds shall be allocated by the chancellor within 30 days of enactment of the annual Budget Act.

(b) For purposes of distributing funds, the chancellor shall define districts as either large, medium, or small, in accordance with all of the following:

(1) A district is large if its total of funded credit FTES exceeds 6,250, based on the 2003–04 second principal apportionment, as modified for any subsequent growth adjustments.

(2) A district is medium if its total of funded credit FTES exceeds 4,000 but does not exceed 6,250, based on the 2003–04 second principal apportionment, as modified for any subsequent growth adjustments.

(3) A district is small if its total of funded credit FTES does not exceed 4,000 FTES, based on the 2003–04 second principal apportionment, as modified for any subsequent growth adjustments.

(c) (1) The chancellor shall compute an equalization adjustment for each applicable large community college district, so that no district's 2003–04 fiscal year base funding per credit FTES is less than the 2003–04 fiscal year base funding per credit FTES above which fall not less than 10 percent of the total statewide funded credit FTES for large districts.

(2) The chancellor shall compute an equalization adjustment for each applicable medium district, so that base funding per credit FTES is not less than the base funding per credit FTES equalization target determined for large districts under paragraph (1), multiplied by 1.03.

This 3 percent adjustment for the medium district equalization target is intended to reasonably recognize diseconomies of scale for these districts.

(3) The chancellor shall compute an equalization adjustment for each applicable small community college district, so that base funding per credit FTES is not less than the base funding per credit FTES equalization target determined for large districts in paragraph (1), multiplied by 1.10. This 10 percent adjustment for the small district equalization target is intended to reasonably recognize diseconomies of scale for small districts, and approximates the difference in targets utilized by the state for elementary and secondary unified school district equalization allocations.

(d) The chancellor shall calculate the total equalization funding necessary to bring all districts up to the target funding per FTES levels determined pursuant to subdivision (c), and shall prepare a simulation of the allocations to each eligible district in this situation.

(e) If the amount appropriated for equalization in the annual Budget Act is less than the amount identified pursuant to subdivision (d), the chancellor shall prorate available equalization funding for each eligible district in proportion to the amount of funds necessary to fully fund those districts.

(f) The chancellor may promulgate regulations on an emergency basis to the extent necessary to complete the adoption of regulations to implement this section within the 2004–05 fiscal year.

(g) The chancellor shall provide a report by October 1, 2004, to the Joint Legislative Budget Committee, the appropriate policy and fiscal committees in each house of the Legislature, the Department of Finance, and the Legislative Analyst specifying the total calculated equalization cost for each eligible district as well as the prorated allocation provided to each eligible district in the 2004–05 fiscal year. The report shall include an evaluation of options and recommendations for revising allocation practices for funds available in subsequent years through restorations in workload, growth funding, and cost-of-living adjustments that further the objective of equalizing funding, consistent with the methodology in this section. The report shall also specify any regulatory and statutory changes necessary to effect the recommendations in future fiscal years.

SEC. 26. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district shall not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute, or portion thereof, is determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of local agencies pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or portion thereof, is specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) This section applies only to the following mandates:

(1) The School Bus Safety II mandate (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) The School Crimes Reporting II mandate (Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).

(3) The Investment Reports mandate (Chapter 783 of the Statutes of 1995).

(4) The Law Enforcement Sexual Harassment Training mandate (Chapter 126 of the Statutes of 1993).

(5) The County Treasury Oversight Committee mandate (Chapter 784 of the Statutes of 1995).

SEC. 27. Section 68926.3 of the Government Code is amended to read:

68926.3. (a) Notwithstanding any other provision of law, sixty-five dollars ($65) of each fee collected in a civil case by the clerk of each court of appeal pursuant to Section 68926 shall be paid into the State Treasury for deposit in a special account in the General Fund to be known as the California State Law Library Special Account, which account is hereby established.

(b) Moneys deposited in the California State Law Library Special Account shall be available for the support of the California State Law Library upon appropriation thereto by the Legislature in the annual Budget Act.

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

SEC. 28. Section 270 of the Public Utilities Code, as amended by Section 1 of Chapter 903 of the Statutes of 2001, is amended to read:

270. (a) The following funds are hereby created in the State Treasury:

(1) The California High-Cost Fund-A Administrative Committee Fund.

(2) The California High-Cost Fund-B Administrative Committee Fund.

(3) The Universal Lifeline Telephone Service Trust Administrative Committee Fund.

(4) The Deaf and Disabled Telecommunications Program Administrative Committee Fund.

(5) The Payphone Service Providers Committee Fund.

(6) The California Teleconnect Fund Administrative Committee Fund.

(b) Moneys in the funds may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act. Any appropriation from the California High-Cost Administrative Committee Fund-B for the purposes of the grant program established in Section 276.5 of the Public Utilities Code regarding rural telecommunications infrastructure, may not be made until all of the following events have occurred:

(1) The United States Supreme Court has decided Iowa Utilities Board v. Federal Communications Commission (219 F.3d 744 (8th Cir.); certiorari granted January 22, 2001).

(2) The commission recalculates the statewide average cost to serve a residential line stated in Decision 96-10-066, as it determines to be appropriate.

(3) The commission is current on all claims made by carriers for service provided in high-cost areas, except for those claims that the commission is in the process of investigating, contesting, or disallowing.

(c) Moneys in each fund may not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity, except as provided for in Sections 276 and 276.5 and Sections 19325 and 19325.1 of the Education Code.

(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. 29. Section 270 of the Public Utilities Code, as added by Section 2 of Chapter 903 of the Statutes of 2001, is amended to read:

270. (a) The following funds are hereby created in the State Treasury:

(1) The California High-Cost Fund-A Administrative Committee Fund.

(2) The California High-Cost Fund-B Administrative Committee Fund.

(3) The Universal Lifeline Telephone Service Trust Administrative Committee Fund.

(4) The Deaf and Disabled Telecommunications Program Administrative Committee Fund.

(5) The Payphone Service Providers Committee Fund.

(6) The California Teleconnect Fund Administrative Committee Fund.

(b) Moneys in the funds may only be expended pursuant to this chapter and upon appropriation in the annual Budget Act.

(c) Moneys in each fund may not be appropriated, or in any other manner transferred or otherwise diverted, to any other fund or entity, except as provided in Sections 19325 and 19325.1 of the Education Code.

(d) This section shall become operative on January 1, 2006.

SEC. 30. Item 6870-101-0959 of Section 2.00 of Chapter 157 of the Statutes of 2003 is repealed.

SEC. 31. The Superintendent of Public Instruction shall reduce funding for basic aid districts from the categorical education funds appropriated in Section 2.00 of the Budget Act of 2004 by a total of two million six hundred sixty-six thousand dollars ($2,666,000). The reduction shall be allocated as follows:

(a) The Superintendent of Public Instruction shall calculate a reduction for each district that was a basic aid district in the 2003–04 fiscal year that is proportionate to its revenue limit as determined at the second principal apportionment of the 2004–05 fiscal year that will achieve the amount of savings specified in this section.

(b) (1) On or before October 26, 2004, the Superintendent of Public Instruction shall notify each district of the reduction amount calculated for that district pursuant to subdivision (a).

(2) On or before February 1, 2005, each district shall notify the Superintendent of Public Instruction of the specific categorical education programs in which the reductions for that district shall be applied and the amount of the reduction for each program, provided that no reduction may be made to a program identified as requiring a maintenance of effort. The Superintendent of Public Instruction shall withhold or recover the identified amount of funds as necessary.

(3) This section does not obligate the state to refund or repay reductions made pursuant to this section. A decision by a school district to reduce funding pursuant to this section for a state-mandated local program shall constitute a waiver of the subvention of funds that the school district is otherwise entitled to pursuant to Section 6 of Article XIII B of the California Constitution in the amount so reduced and that decision shall be made only after the school district first considers reductions to voluntary categorical education programs.

(c) If a district does not receive property tax revenue sufficient to fully fund its revenue limit during the 2004–05 fiscal year, any reductions to that district's categorical education funding by this section shall be restored.

(d) No later than June 1, 2005, the Superintendent of Public Instruction shall report to the Controller and the Director of Finance the amount to be reduced from each categorical education program and identify the corresponding item of appropriation in the Budget Act of 2004 to be reduced. The reductions shall equal the total amount to be reduced pursuant to this section. On June 15, 2005, the amounts appropriated by the Budget Act of 2004 in the items identified by the Superintendent of Public Instruction are hereby reduced by the amounts reported by the Superintendent of Public Instruction. The amounts so reduced shall revert to the unexpended balance of the General Fund. The reductions pursuant to this subdivision shall be reductions in the amount appropriated for purposes of Section 8 of Article XVI of the California Constitution for the 2004–05 fiscal year.

(e) For purposes of this section, ''basic aid school district'' means a school district that does not receive from the state, for any fiscal year in which the section is applied, an apportionment of state funds pursuant to subdivision (h) of Section 42238 of the Education Code.

SEC. 32. (a) Notwithstanding any other law, for the purpose of computing the amount of funds continuously appropriated from the General Fund to Section A of the State School Fund pursuant to subdivision (f) of Section 48664 of the Education Code for community day school programs operated in the 2002–03 and 2003–04 fiscal years, the Superintendent of Public Instruction may adjust the hours of attendance in community day school programs reported by local educational agencies, for the purposes of calculating the additional funding pursuant to subdivision (a) of Section 48664 of the Education Code, as follows:

(1) The Superintendent of Public Instruction may deem a portion of the hours of attendance for pupils in attendance in community day school programs during the 2002–03 fiscal year who were not expelled pursuant to subdivision (d) of Section 48915 of the Education Code, as reported to the State Department of Education by local educational agencies on or before June 30, 2004, to have been expelled pursuant to subdivision (d) of Section 48915 of the Education Code. This action shall not result in a reallocation of unexpended balances pursuant to paragraph (2) of subdivision (a) of Section 48664 of the Education Code.

(2) The Superintendent of Public Instruction may deem a portion of the hours of attendance for pupils in attendance in community day school programs during the 2003–04 fiscal year who were not expelled pursuant to subdivision (d) of Section 48915 of the Education Code, as reported

to the State Department of Education by local educational agencies on or before June 30, 2005, to have been expelled pursuant to subdivision (d) of Section 48915 of the Education Code. This action shall not result in a reallocation of unexpended balances pursuant to paragraph (2) of subdivision (a) of Section 48664 of the Education Code.

(b) Notwithstanding any adjustments in hours of attendance made pursuant to this section, no local educational agency shall receive funding for community day school pupils in excess of the maximum amounts allowed pursuant to Article 3 (commencing with Section 48660) of Chapter 4 of Part 27 of the Education Code.

SEC. 33. (a) It is the intent of the Legislature and the Governor that the equalization formulas in Sections 42238.44 and 42238.46 of the Education Code not be deemed to be a precedent for the distribution to school districts of additional equalization funding in any fiscal year subsequent to the 2004–05 fiscal year.

(b) It is the intent of the Legislature and the Governor that, by the end of the 2005–06 fiscal year, the Legislature enact a new statutory formula for the distribution of equalization funding in any fiscal year subsequent to the 2004–05 fiscal year and that the new statutory formula provide an equitable distribution to school districts of equalization funding relative to the distribution to school districts of general purpose revenues.

SEC. 34. Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision in 97-TC-23, relating to the Standardized Testing and Reporting (STAR) program mandate, and its parameters and guidelines for calculating the state reimbursement for that mandate pursuant to Section 6 of Article XIII B of the California Constitution for each of the following statutes in light of federal statutes enacted and state court decisions rendered since these statutes were enacted:

(a) Chapter 975 of the Statutes of 1995.

(b) Chapter 828 of the Statutes of 1997.

(c) Chapter 576 of the Statutes of 2000.

(d) Chapter 722 of the Statutes of 2001.

SEC. 35. It is the intent of the Legislature that, as part of the annual budget process, the Director of Finance consider the provision of additional enrollment growth funding to the California Community Colleges to support the students in that system who are participating in the dual admissions program.

SEC. 36. (a) The sum of nine hundred twenty-six million five hundred twenty-seven thousand dollars ($926,527,000) is hereby appropriated from the General Fund in accordance with the following schedule:

(1) The following amounts are appropriated for the 2005–06 fiscal year:

(A) The sum of five million nine hundred thirty-three thousand dollars ($5,933,000) to the State Department of Education for apprenticeship programs to be expended consistent with the requirements specified in Item 6110-103-0001 of Section 2.00 of the Budget Act of 2004.

(B) The sum of eighty-five million eight hundred sixty-six thousand dollars ($85,866,000) to the State Department of Education for supplemental instruction to be expended consistent with the requirements specified in Item 6110-104-0001 of Section 2.00 of the Budget Act of 2004. Of the amount appropriated by this subparagraph, forty-eight million six hundred fifty-two thousand dollars ($48,652,000) shall be expended consistent with Schedule (1) of Item 6110-104-0001 of Section 2.00 of the Budget Act of 2004, eleven million seven hundred forty-nine thousand dollars ($11,749,000) shall be expended consistent with Schedule (2) of that item, four million four hundred sixty-nine thousand dollars ($4,469,000) shall be expended consistent with Schedule (3) of that item, and twenty million nine hundred ninety-six thousand dollars ($20,996,000) shall be expended consistent with Schedule (4) of that item.

(C) The sum of thirty-seven million fifty-one thousand dollars ($37,051,000) to the State Department of Education for regional occupational centers and programs to be expended consistent with the requirements specified in Schedule (1) of Item 6110-105-0001 of Section 2.00 of the Budget Act of 2004.

(D) The sum of fifty million one hundred three thousand dollars ($50,103,000) to the State Department of Education for home-to-school transportation to be expended consistent with the requirements specified in Schedule (1) of Item 6110-111-0001 of Section 2.00 of the Budget Act of 2004.

(E) The sum of four million ninety-two thousand dollars ($4,092,000) to the State Department of Education for the Gifted and Talented Pupil Program to be expended consistent with the requirements specified in Item 6110-124-0001 of Section 2.00 of the Budget Act of 2004.

(F) The sum of ninety-five million three hundred ninety-seven thousand dollars ($95,397,000) to the State Department of Education for Targeted Instructional Improvement Grant Program to be expended consistent with the requirements specified in Item 6110-132-0001 of Section 2.00 of the Budget Act of 2004.

(G) The sum of forty-two million nine hundred fifty-nine thousand dollars ($42,959,000) to the State Department of Education for adult education to be expended consistent with the requirements specified in Schedule (1) of Item 6110-156-0001 of Section 2.00 of the Budget Act of 2004.

(H) The sum of four million five hundred fifty-eight thousand dollars ($4,558,000) to the State Department of Education for community day schools to be expended consistent with the requirements specified in Item 6110-190-0001 of Section 2.00 of the Budget Act of 2OO4.

(I) The sum of five million two hundred ninety-eight thousand dollars ($5,298,000) to the State Department of Education for categorical block grants for charter schools to be expended consistent with the requirements specified in Item 6110-211-0001 of Section 2.00 of the Budget Act of 2004.

(J) The sum of thirty-six million eight hundred ninety-four thousand dollars ($36,894,000) to the State Department of Education for the School Safety Block Grant to be expended consistent with the requirements specified in Schedule (1) of Item 6110-228-0001 of Section 2.00 of the Budget Act of 2004.

(K) The sum of two hundred million dollars ($200,000,000) to the Board of Governors of the California Community Colleges for apportionments, to be expended in accordance with the requirements specified for Schedule (1) of Item 6870-101-0001 of Section 2.00 of the Budget Act of 2004.

(2) The sum of one hundred nine million nine hundred fourteen thousand dollars ($109,914,000) is appropriated for the 2004–05 fiscal year to the Superintendent of Public Instruction for the purposes of Section 42238.44 of the Education Code, to be allocated to school districts on a pro rata basis.

(3) The following amounts are appropriated for the 2003–04 fiscal year:

(A) The sum of six million dollars ($6,000,000) to the State Department of Education for arts education programs conducted by local educational agencies pursuant to guidelines developed by the State Department of Education and approved by the State Board of Education, as authorized by Chapter 5.1 (commencing with Section 8820) of Part 6 of the Education Code.

(B) The sum of twelve million six hundred four thousand dollars ($12,604,000) to the State Department of Education for transfer to the State School Deferred Maintenance Fund to be available for funding applications received by the Department of General Services, Office of Public School Construction from school districts for deferred maintenance projects pursuant to Section 17584 of the Education Code.

(C) (i) The sum of one hundred thirty-eight million dollars ($138,000,000) to the State Department of Education for transfer to the Instructional Materials Fund.

(ii) The funds appropriated pursuant to subparagraph (A) shall be apportioned to school districts on the basis of an equal amount per pupil enrolled in schools in decile 1 or 2 of the Academic Performance Index

(API), as ranked in the 2003–04 API pursuant to Section 52056 of the Education Code.

(iii) The funds apportioned pursuant to subparagraph (B) shall be used to purchase standards-aligned instructional materials pursuant to Section 60605 of the Education Code.

(D) The sum of five million dollars ($5,000,000) to the State Department of Education for the purposes of the Academic Improvement and Achievement Act as set forth in Chapter 12 (commencing with Section 11020) of Part 7 of the Education Code.

(E) The sum of fifty-eight million three hundred ninety-six thousand dollars ($58,396,000) to the Controller to pay for prior year state obligations for education mandate claims and interest. The Controller shall use the funds to pay for the oldest claims of those no longer subject to audit pursuant to subdivision (a) of Section 17558.5 of the Government Code, including accrued interest. No payments shall be made from these funds on any claims for the Standardized Testing and Reporting (STAR) Program, schoolsite councils, Brown Act reform, School Bus Safety II, or the removal of chemicals.

(F) The sum of twenty-eight million three hundred seventy-six thousand dollars ($28,376,000) to the Board of Governors of the California Community Colleges to provide one-time funding to districts for scheduled maintenance, special repairs, instructional materials, and library materials replacement. These funds shall be expended for the purposes of and be subject to the conditions of expenditures pursuant to Schedule (24.5) of Item 6870-101-0001 of the Budget Act of 2003 (Ch. 157, Stats. 2003).

(b) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by subparagraphs (A) to (J), inclusive, of paragraph (1) of subdivision (a) shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code, for the 2005–06 fiscal year, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code for the 2005–06 fiscal year.

(c) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subparagraph (K) of paragraph (1) of subdivision (a) shall be deemed to be ''General Fund revenues appropriated for community college districts,'' as defined in subdivision (d) of Section 41202 of the Education Code, for the 2005–06 fiscal year, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article

XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code, for the 2005–06 fiscal year.

(d) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by paragraph (2) of subdivision (a) shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code for the 2004–05 fiscal year and be included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code for the 2004–05 fiscal year.

(e) For the purpose of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriations made by subparagraphs (A) to (E), inclusive, of paragraph (3) of subdivision (a) shall be deemed to be ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202 of the Education Code, for the 2003–04 fiscal year, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year.

(f) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation made by subparagraph (F) of paragraph (3) of subdivision (a) shall be deemed to be ''General Fund revenues appropriated for community college districts,'' as defined in subdivision (d) of Section 41202 of the Education Code, for the 2003–04 fiscal year, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202 of the Education Code for the 2003–04 fiscal year.

SEC. 37. Notwithstanding any other law, the funds appropriated pursuant to Items 6110-103-0001, 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-161-0001, 6110-190-0001, 6110-204-0001, 6110-205-0001, and 6110-211-0001 of Section 2.00 of the Budget Act of 2001 (Ch. 106, Stats. 2001) shall be available for expenditure through July 31, 2004, and after that date, all remaining unexpended funds in those items shall revert to the Proposition 98 Reversion Account.

SEC. 38. Notwithstanding any other law, the funds appropriated pursuant to Items 6110-103-0001, 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-161-0001, 6110-190-0001, 6110-204-0001, 6110-205-0001, and 6110-211-0001 of Section 2.00 of the Budget Act of 2002 (Ch. 379, Stats. 2002) shall be available for expenditure through

July 31, 2005, and after that date, all remaining unexpended funds in those items shall revert to the Proposition 98 Reversion Account.

SEC. 39. Notwithstanding any other law, the funds appropriated pursuant to Items 6110-103-0001, 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-161-0001, 6110-190-0001, and 6110-211-0001 of Section 2.00 of the Budget Act of 2003 (Ch. 157, Stats. 2003) shall be available for expenditure through July 31, 2006, and after that date, all remaining unexpended funds in those items shall revert to the Proposition 98 Reversion Account.

SEC. 40. Notwithstanding Sections 42238.1 and 42238.15 of the Education Code or any other law, the cost-of-living adjustment for Items 6110-104-0001, 6110-105-0001, 6110-156-0001, 6110-158-0001, 6110-161-0001, 6110-189-0001, 6110-190-0001, 6110-191-0001, 6110-196-0001, 6110-232-0001, 6110-234-0001, and 6110-235-0001 of Section 2.00 of the Budget Act of 2004, and those items identified in subdivision (b) of Section 12.40 of the Budget Act of 2004 shall be 2.41 percent. All funds appropriated in the items identified in this section are in lieu of the amounts that would otherwise be appropriated pursuant to any other law.

SEC. 41. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 42. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2004 at the earliest time possible, it is necessary that this act take effect immediately.

CHAPTER 217

An act to add Section 12811.3 to the Government Code, relating to state employees, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 11, 2004. Filed with
Secretary of State August 11, 2004.]

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 addendum to an agreement reached pursuant to Sections 3517 and 3517.5 of the Government Code entered into by the state employer and State Bargaining Unit 6.

SEC. 2. The provisions of the addendum to the memorandum of understanding prepared pursuant to Section 3517.5 of the Government Code, entered into by the state employer and State Bargaining Unit 6, the California Correctional Peace Officers Association, which requires the expenditure of funds, are hereby approved for the purposes of Sections 3517.6 and 3517.61 of the Government Code.

SEC. 3. The provisions of the addendum to the memorandum of understanding approved by Section 2 of this act that are scheduled to take effect on or after July 1, 2004, 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 provisions of the addendum to the memorandum of understanding.

SEC. 4. Notwithstanding Sections 3517.6 and 3517.61 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. Section 12811.3 is added to the Government Code, to read:

12811.3. (a) Notwithstanding any other provision of law and subject to the provisions of subdivision (i), any employee of a department, board, or commission under the jurisdiction of the Youth and Adult Correctional Agency, who is designated as a peace officer described in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, may transfer from his or her current position to another department, board, or commission under the jurisdiction of the Youth and Adult Correctional Agency.

(b) Any peace officer who desires to transfer to another department, board, or commission pursuant to subdivision (a), and who is prohibited from carrying a firearm pursuant to paragraph (8) of subdivision (g) of Section 922 of Title 18 of the United States Code or Section 12021 of the Penal Code may not transfer to a department, board, or commission that requires the use of a firearm.

(c) Any peace officer who desires to transfer to another department, board, or commission pursuant to subdivision (a) to a position requiring the ability to carry a firearm, as determined by the department, board, or commission, and who has not completed the required training pursuant to Section 832 of the Penal Code, shall successfully complete the required training before appointment to his or her new peace officer position.

(d) (1) Any peace officer who desires to transfer shall not be required to undergo a psychological screening pursuant to subdivision (f) of Section 1031 or subdivision (a) of Section 13601 of the Penal Code, unless the Secretary of the Youth and Adult Correctional Agency, or his or her designee, makes a determination that a peace officer is required to undergo all or a portion of a psychological screening as described in subdivision (f) of Section 1031 of this code or subdivision (a) of Section 13601 of the Penal Code.

(2) The Secretary of the Youth and Adult Correctional Agency shall promulgate emergency regulations in order to implement paragraph (1). Notwithstanding subdivision (b) of Section 11346.1, no showing of an emergency shall be necessary in order to adopt, amend, or repeal the emergency regulations required by this paragraph.

(e) Any peace officer who has successfully completed a course of training pursuant to Section 13602 of the Penal Code and who transfers to another department, board, or commission pursuant to subdivision (a) shall not be required to complete a new course of training pursuant to Section 13602 of the Penal Code. However, each department, board, or commission may prescribe additional training to be provided to an employee who transfers pursuant to subdivision (a) and shall provide that training within the first six months of appointment to his or her new peace officer position.

(f) Any peace officer who desires to transfer to another department, board, or commission pursuant to subdivision (a) shall not be required to undergo a new background investigation pursuant to Section 1029.1.

(g) Nothing in this section shall affect an employee's seniority calculation as provided for under current law or any memorandum of understanding between the state and any applicable bargaining unit agreement in effect upon the effective date of this section.

(h) The provisions of the Unit 6 Memorandum of Understanding, which expires July 2, 2006, as modified by the ratified addendum dated June 30, 2004, relating to the release of copies of videotaped incidents, shall be subject to the California Public Records Act.

(i) This section shall become operative only when the Secretary of the Youth and Adult Correctional Agency certifies in writing that it is necessary to prevent or minimize employment actions, including, but not limited to, layoffs, demotions, reductions in time base, or

involuntary transfers of employees. In addition, the Secretary of the Youth and Adult Correctional Agency shall have the sole authority to designate any or all departments, boards, or commissions eligible to have its peace officer employees transfer pursuant to subdivision (a) and any or all departments, boards, or commissions that shall accept peace officer employees under this section.

SEC. 6. (a) Notwithstanding Section 13340 of the Government Code, there is hereby appropriated, from any appropriate fund sources, the sum necessary to satisfy the economic requirements for employee compensation for employees included in State Bargaining Unit 6, for the term of the Unit 6 Memorandum of Understanding, which expires July 2, 2006, as modified by the ratified addendum dated June 30, 2004.

(b) It is the intent of the Legislature that the appropriation made by this section shall not be construed to set precedent for the funding of the provisions of any future memorandum of understanding entered into pursuant to Sections 3517 and 3517.5 of the Government Code.

SEC. 7. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to be applicable as soon as possible in the 2004–05 fiscal year, and thereby facilitate the orderly administration of state government at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 218

An act to amend Section 73.8 of, and to repeal Sections 73.5 and 73.6 of, the Military and Veterans Code, relating to state government.

[Approved by Governor August 11, 2004. Filed with Secretary of State August 11, 2004.]

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

SECTION 1. Section 73.5 of the Military and Veterans Code is repealed.

SEC. 2. Section 73.6 of the Military and Veterans Code is repealed.

SEC. 3. Section 73.8 of the Military and Veterans Code is amended to read:

73.8. The board shall have access to all documents and employees of the department.

CHAPTER 219

An act to repeal Article 3.5 (commencing with Section 4138) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, relating to public resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 11, 2004. Filed with Secretary of State August 11, 2004.]

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

SECTION 1. Article 3.5 (commencing with Section 4138 of Chapter 1 of Part 2 of Division 4 of the Public Resources Code is repealed.

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 implement necessary statutory changes relating to the Budget Act of 2004, it is necessary for this act to take effect immediately as an urgency statute.

CHAPTER 220

An act to make an appropriation in augmentation of the Budget Act of 2003, relating to contingencies or emergencies, to take effect immediately as an appropriation for the usual current expenses of the state.

[Approved by Governor August 11, 2004. Filed with Secretary of State August 11, 2004.]

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

SECTION 1. The sum of four hundred seventy-seven million four hundred forty-six thousand dollars ($477,446,000) is hereby appropriated for expenditure for the 2003–04 fiscal year in augmentation and for the purposes of Contingencies or Emergencies as provided in

Items 9840-001-0001, 9840-001-0494, and 9840-001-0988 of Section 2.00 of the Budget Act of 2003 (Chapter 157 of the Statutes of 2003), in accordance with the following schedule:

(a) Four hundred seventy-two million eight hundred thirty-one thousand dollars ($472,831,000) from the General Fund to the Augmentation for Contingencies or Emergencies in Item 9840-001-0001.

(b) Eight hundred thousand dollars ($800,000) from unallocated special funds to the Augmentation for Contingencies or Emergencies in Item 9840-001-0494.

(c) Three million eight hundred fifteen thousand dollars ($3,815,000) from unallocated nongovernmental cost funds to the Augmentation for Contingencies or Emergencies in Item 9840-001-0988.

SEC. 2. The Director of Finance may withhold authorization for the expenditure of funds provided in this act until such time as, and to the extent that, preliminary estimates of potential deficiencies are verified.

SEC. 3. This act makes an appropriation for the usual current expenses of the state within the meaning of subdivision (c) of Section 8 of Article IV of the California Constitution and shall go into immediate effect.

CHAPTER 221

An act to amend Sections 98.6 and 2699 of, to add Sections 2699.3 and 2699.5 to, and to repeal Section 431 of, the Labor Code, relating to private employment, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 11, 2004. Filed with Secretary of State August 11, 2004.]

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

SECTION 1. Section 98.6 of the Labor Code is amended to read:

98.6. (a) No person shall discharge an employee or in any manner discriminate against any employee or applicant for employment because the employee or applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee or applicant for employment has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights, which are under the jurisdiction of the Labor Commissioner, or because the employee has

initiated any action or notice pursuant to Section 2699, or has testified or is about to testify in any such proceeding or because of the exercise by the employee or applicant for employment on behalf of himself, herself, or others of any rights afforded him or her.

(b) Any employee who is discharged, threatened with discharge, demoted, suspended, or in any other manner discriminated against in the terms and conditions of his or her employment because the employee engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the employee has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to reinstatement and reimbursement for lost wages and work benefits caused by such acts of the employer. Any employer who willfully refuses to hire, promote, or otherwise restore an employee or former employee who has been determined to be eligible for such rehiring or promotion by a grievance procedure, arbitration, or hearing authorized by law, is guilty of a misdemeanor.

(c) (1) Any applicant for employment who is refused employment, who is not selected for a training program leading to employment, or who in any other manner is discriminated against in the terms and conditions of any offer of employment because the applicant engaged in any conduct delineated in this chapter, including the conduct described in subdivision (k) of Section 96, and Chapter 5 (commencing with Section 1101) of Part 3 of Division 2, or because the applicant has made a bona fide complaint or claim to the division pursuant to this part, or because the employee has initiated any action or notice pursuant to Section 2699 shall be entitled to employment and reimbursement for lost wages and work benefits caused by the acts of the prospective employer.

(2) This subdivision shall not be construed to invalidate any collective bargaining agreement that requires an applicant for a position that is subject to the collective bargaining agreement to sign a contract that protects either or both of the following as specified in paragraphs (A) and (B), nor shall this subdivision be construed to invalidate any employer requirement of an applicant for a position that is not subject to a collective bargaining agreement to sign an employment contract that protects either or both of the following:

(A) An employer against any conduct that is actually in direct conflict with the essential enterprise-related interests of the employer and where breach of that contract would actually constitute a material and substantial disruption of the employer's operation.

(B) A firefighter against any disease that is presumed to arise in the course and scope of employment, by limiting his or her consumption of tobacco products on and off the job.

(d) The provisions of this section creating new actions or remedies that are effective on January 1, 2002, to employees or applicants for employment do not apply to any state or local law enforcement agency, any religious association or corporation specified in subdivision (d) of Section 12926 of the Government Code, except as provided in Section 12926.2 of the Government Code, or any person described in Section 1070 of the Evidence Code.

SEC. 2. Section 431 of the Labor Code is repealed.

SEC. 3. Section 2699 of the Labor Code is amended to read:

2699. (a) Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

(b) For purposes of this part, ''person'' has the same meaning as defined in Section 18.

(c) For purposes of this part, ''aggrieved employee'' means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

(d) For purposes of this part, ''cure'' means that the employer abates each violation alleged by any aggrieved employee, the employer is in compliance with the underlying statutes as specified in the notice required by this part, and any aggrieved employee is made whole.

(e) (1) For purposes of this part, whenever the Labor and Workforce Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, has discretion to assess a civil penalty, a court is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

(2) In any action by an aggrieved employee seeking recovery of a civil penalty available under subdivision (a) or (f), a court may award a lesser amount than the maximum civil penalty amount specified by this part if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.

(f) For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows:

(1) If, at the time of the alleged violation, the person does not employ one or more employees, the civil penalty is five hundred dollars ($500).

(2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars ($100) for each

aggrieved employee per pay period for the initial violation and two hundred dollars ($200) for each aggrieved employee per pay period for each subsequent violation.

(3) If the alleged violation is a failure to act by the Labor and Workplace Development Agency, or any of its departments, divisions, commissions, boards, agencies, or employees, there shall be no civil penalty.

(g) (1) Except as provided in paragraph (2), an aggrieved employee may recover the civil penalty described in subdivision (f) in a civil action pursuant to the procedures specified in Section 2699.3 filed on behalf of himself or herself and other current or former employees against whom one or more of the alleged violations was committed. Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs. Nothing in this part shall operate to limit an employee's right to pursue or recover other remedies available under state or federal law, either separately or concurrently with an action taken under this part.

(2) No action shall be brought under this part for any violation of a posting, notice, agency reporting, or filing requirement of this code, except where the filing or reporting requirement involves mandatory payroll or workplace injury reporting.

(h) No action may be brought under this section by an aggrieved employee if the agency or any of its departments, divisions, commissions, boards, agencies, or employees, on the same facts and theories, cites a person within the timeframes set forth in Section 2699.3 for a violation of the same section or sections of the Labor Code under which the aggrieved employee is attempting to recover a civil penalty on behalf of himself or herself or others or initiates a proceeding pursuant to Section 98.3.

(i) Except as provided in subdivision (j), civil penalties recovered by aggrieved employees shall be distributed as follows: 75 percent to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes; and 25 percent to the aggrieved employees.

(j) Civil penalties recovered under paragraph (1) of subdivision (f) shall be distributed to the Labor and Workforce Development Agency for enforcement of labor laws and education of employers and employees about their rights and responsibilities under this code, to be continuously appropriated to supplement and not supplant the funding to the agency for those purposes.

(k) Nothing contained in this part is intended to alter or otherwise affect the exclusive remedy provided by the workers' compensation

provisions of this code for liability against an employer for the compensation for any injury to or death of an employee arising out of and in the course of employment.

(*l*) The superior court shall review and approve any penalties sought as part of a proposed settlement agreement pursuant to this part.

(m) This section shall not apply to the recovery of administrative and civil penalties in connection with the workers' compensation law as contained in Division 1 (commencing with Section 50) and Division 4 (commencing with Section 3200), including, but not limited to, Sections 129.5 and 132a.

(n) The agency or any of its departments, divisions, commissions, boards, or agencies may promulgate regulations to implement the provisions of this part.

SEC. 4. Section 2699.3 is added to the Labor Code, to read:

2699.3. (a) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The agency shall notify the employer and the aggrieved employee or representative by certified mail that it does not intend to investigate the alleged violation within 30 calendar days of the postmark date of the notice received pursuant to paragraph (1). Upon receipt of that notice or if no notice is provided within 33 calendar days of the postmark date of the notice given pursuant to paragraph (1), the aggrieved employee may commence a civil action pursuant to Section 2699.

(B) If the agency intends to investigate the alleged violation, it shall notify the employer and the aggrieved employee or representative by certified mail of its decision within 33 calendar days of the postmark date of the notice received pursuant to paragraph (1). Within 120 calendar days of that decision, the agency may investigate the alleged violation and issue any appropriate citation. If the agency determines that no citation will be issued, it shall notify the employer and aggrieved employee of that decision within five business days thereof by certified mail. Upon receipt of that notice or if no citation is issued by the agency within the 158-day period prescribed by subparagraph (A) and this subparagraph or if the agency fails to provide timely or any notification, the aggrieved employee may commence a civil action pursuant to Section 2699.

(C) Notwithstanding any other provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising under this part at any time within 60 days of the time periods specified in this part.

(b) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give notice by certified mail to the Division of Occupational Safety and Health and the employer, with a copy to the Labor and Workforce Development Agency, of the specific provisions of Division 5 (commencing with Section 6300) alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The division shall inspect or investigate the alleged violation pursuant to the procedures specified in Division 5 (commencing with Section 6300).

(i) If the division issues a citation, the employee may not commence an action pursuant to Section 2699. The division shall notify the aggrieved employee and employer in writing within 14 calendar days of certifying that the employer has corrected the violation.

(ii) If by the end of the period for inspection or investigation provided for in Section 6317, the division fails to issue a citation and the aggrieved employee disputes that decision, the employee may challenge that decision in the superior court. In such an action, the superior court shall follow precedents of the Occupational Safety and Health Appeals Board. If the court finds that the division should have issued a citation and orders the division to issue a citation, then the aggrieved employee may not commence a civil action pursuant to Section 2699.

(iii) A complaint in superior court alleging a violation of Division 5 (commencing with Section 6300) other than those listed in Section 2699.5 shall include therewith a copy of the notice of violation provided to the division and employer pursuant to paragraph (1).

(iv) The superior court shall not dismiss the action for nonmaterial differences in facts or theories between those contained in the notice of violation provided to the division and employer pursuant to paragraph (1) and the complaint filed with the court.

(B) If the division fails to inspect or investigate the alleged violation as provided by Section 6309, the provisions of subdivision (c) shall apply to the determination of the alleged violation.

(3) (A) Nothing in this subdivision shall be construed to alter the authority of the division to permit long-term abatement periods or to

enter into memoranda of understanding or joint agreements with employers in the case of long-term abatement issues.

(B) Nothing in this subdivision shall be construed to authorize an employee to file a notice or to commence a civil action pursuant to Section 2699 during the period that an employer has voluntarily entered into consultation with the division to ameliorate a condition in that particular worksite.

(C) An employer who has been provided notice pursuant to this section may not then enter into consultation with the division in order to avoid an action under this section.

(4) The superior court shall review and approve any proposed settlement of alleged violations of the provisions of Division 5 (commencing with Section 6300) to ensure that the settlement provisions are at least as effective as the protections or remedies provided by state and federal law or regulation for the alleged violation. The provisions of the settlement relating to health and safety laws shall be submitted to the division at the same time that they are submitted to the court. This requirement shall be construed to authorize and permit the division to comment on those settlement provisions, and the court shall grant the division's commentary the appropriate weight.

(c) A civil action by an aggrieved employee pursuant to subdivision (a) or (f) of Section 2699 alleging a violation of any provision other than those listed in Section 2699.5 or Division 5 (commencing with Section 6300) shall commence only after the following requirements have been met:

(1) The aggrieved employee or representative shall give written notice by certified mail to the Labor and Workforce Development Agency and the employer of the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.

(2) (A) The employer may cure the alleged violation within 33 calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

(B) No employer may avail himself or herself of the notice and cure provisions of this subdivision more than three times in a 12-month period for the same violation or violations contained in the notice, regardless of the location of the worksite.

(3) If the aggrieved employee disputes that the alleged violation has been cured, the aggrieved employee or representative shall provide

written notice by certified mail, including specified grounds to support that dispute, to the employer and the agency. Within 17 calendar days of the postmark date of that notice, the agency shall review the actions taken by the employer to cure the alleged violation, and provide written notice of its decision by certified mail to the aggrieved employee and the employer. The agency may grant the employer three additional business days to cure the alleged violation. If the agency determines that the alleged violation has not been cured or if the agency fails to provide timely or any notification, the employee may proceed with the civil action pursuant to Section 2699. If the agency determines that the alleged violation has been cured, but the employee still disagrees, the employee may appeal that determination to the superior court.

(d) The periods specified in this section are not counted as part of the time limited for the commencement of the civil action to recover penalties under this part.

SEC. 5. Section 2699.5 is added to the Labor Code, to read:

2699.5. The provisions of subdivision (a) of Section 2699.3 shall apply to any alleged violation of the following provisions: subdivision (k) of Section 96, Section 98.6, 201, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, 212, subdivision (d) of Section 213, 221, 222, 222.5, 223, 224, subdivision (a) of Section 226, 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, 233, 234, 351, 353, 403, subdivision (b) of Section 404, 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, subdivision (c) or (d) of Section 1174, 1194, 1197, 1197.1, 1197.5, 1198, subdivision (b) of Section 1198.3, 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, 1695, subdivision (a) of Section 1695.5, 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, paragraph (1), (2), or (3) of subdivision (a) of or subdivision (e) of Section 1701.4, subdivision (a) of Section 1701.5, 1701.8, 1701.10, 1701.12, 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, 2673, subdivision (a) of Section 2673.1, 2695.2, 2800, 2801, 2802, 2806, 2810, subdivision (b) of Section 2929, 3095, 6310, 6311, or 6399.7.

SEC. 6. (a) The Legislature finds and declares that, as enunciated in long-standing judicial precedent, its inherent authority to create causes of action or remedies necessarily includes the authority to abolish them. Therefore, a plaintiff seeking recovery upon a legislatively created cause of action runs the risk that the Legislature may repeal or alter that

cause during the pendency of the claim. Thus, the Legislature further finds and declares that the alteration of the right to recover civil penalties for violations of the Labor Code made by this act may be applied retroactively to any applicable pending proceeding without depriving any person of a substantive right without due process of law.

(b) (1) The provisions of paragraph (2) of subdivision (g) of Section 2699 of the Labor Code shall apply retroactively to January 1, 2004, the effective date of Chapter 906 of the Statutes of 2003, and shall affect all applicable pending proceedings.

(2) The provisions of subdivision (*l*) of Section 2699 of the Labor Code shall apply retroactively to January 1, 2004, the effective date of Chapter 906 of the Statutes of 2003, and shall affect all applicable pending proceedings.

SEC. 7. 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. 8. Notwithstanding any other provision of law, the provisions of Section 5 of this act relating to the duties and functions of the Division of Occupational Safety and Health shall be subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection pursuant to Chapter 2 (commencing with Section 474) of Division 1.2 of the Business and Professions Code in consultation with the Senate Committee on Labor and Industrial Relations and the Assembly Committee on Labor and Employment. The first review shall be completed no later than three years from the effective date of this act.

SEC. 9. There is appropriated from the General Fund one hundred fifty thousand dollars ($150,000) to the Labor and Workforce Development Agency for the purposes of implementing the purposes of this act.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To provide relief to some employers who may be adversely affected by frivolous lawsuits brought pursuant to the Labor Code Private Attorneys General Act of 2004 and to provide meaningful remedies to employees suffering from egregious violations of the Labor Code at the earliest possible time, it is necessary for this act to take effect immediately.

CHAPTER 222

An act to add Section 6608.5 to the Welfare and Institutions Code, relating to sexually violent predators, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 12, 2004. Filed with Secretary of State August 12, 2004.]

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

SECTION 1. Section 6608.5 is added to the Welfare and Institutions Code, to read as follows:

6608.5. (a) A person who is conditionally released pursuant to this article shall be placed in the county of the domicile of the person prior to the person's incarceration, unless the court finds that extraordinary circumstances require placement outside the county of domicile.

(b) (1) For the purposes of this section, ''county of domicile'' means the county where the person has his or her true, fixed, and permanent home and principal residence and to which he or she has manifested the intention of returning whenever he or she is absent. For the purposes of determining the county of domicile, the court may consider information found on 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 information contained in an arrest record, probation officer's report, trial transcript, or other court document. If no information can be identified or verified, the county of domicile of the individual shall be considered to be the county in which the person was arrested for the crime for which he or she was last incarcerated in the state prison or from which he or she was last returned from parole.

(2) In a case where the person committed a crime while being held for treatment in a state hospital, or while being confined in a state prison or local jail facility, the county wherein that facility was located shall not be considered the county of domicile unless the person resided in that county prior to being housed in the hospital, prison, or jail.

(c) For the purposes of this section, ''extraordinary circumstances'' means circumstances that would inordinately limit the department's ability to effect conditional release of the person in the county of domicile in accordance with Section 6608 or any other provision of this article, and the procedures described in Sections 1605 to 1610, inclusive, of the Penal Code.

(d) The county of domicile shall designate a county agency or program that will provide assistance and consultation in the process of locating and securing housing within the county for persons committed

as sexually violent predators who are about to be conditionally released under Section 6608. Upon notification by the department of a person's potential or expected conditional release under Section 6608, the county of domicile shall notify the department of the name of the designated agency or program, at least 60 days before the date of the potential or expected release.

(e) The department shall take into consideration victim or victim next of kin concerns and proximity when recommending specific placement for community outpatient treatment.

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

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

In order to provide state and local authorities with urgently needed clarification with respect to procedures involved with the conditional release of sexually violent predators, it is necessary that this act take effect immediately.

CHAPTER 223

An act to amend Section 13903 of the Government Code, and to amend Sections 1202.4, 1202.45, 1214, and 2085.5 of, and to add Section 1202.44 to, the Penal Code, relating to restitution, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 13903 of the Government Code is amended to read:

13903. The Secretary of the State and Consumer Services Agency shall serve as chair of the board.

SEC. 2. Section 1202.4 of the Penal Code is amended to read:

1202.4. (a) (1) It is the intent of the Legislature that a victim of crime who incurs any economic loss as a result of the commission of a crime shall receive restitution directly from any defendant convicted of that crime.

(2) Upon a person being convicted of any crime in the State of California, the court shall order the defendant to pay a fine in the form of a penalty assessment in accordance with Section 1464.

(3) The court, in addition to any other penalty provided or imposed under the law, shall order the defendant to pay both of the following:

(A) A restitution fine in accordance with subdivision (b).

(B) Restitution to the victim or victims, if any, in accordance with subdivision (f), which shall be enforceable as if the order were a civil judgment.

(b) In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.

(1) The restitution fine shall be set at the discretion of the court and commensurate with the seriousness of the offense, but shall not be less than two hundred dollars ($200), and not more than ten thousand dollars ($10,000), if the person is convicted of a felony, and shall not be less than one hundred dollars ($100), and not more than one thousand dollars ($1,000), if the person is convicted of a misdemeanor.

(2) In setting a felony restitution fine, the court may determine the amount of the fine as the product of two hundred dollars ($200) multiplied by the number of years of imprisonment the defendant is ordered to serve, multiplied by the number of felony counts of which the defendant is convicted.

(c) The court shall impose the restitution fine unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution fine. Inability to pay may be considered only in increasing the amount of the restitution fine in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum.

(d) In setting the amount of the fine pursuant to subdivision (b) in excess of the two-hundred-dollar ($200) or one-hundred-dollar ($100) minimum, the court shall consider any relevant factors including, but not limited to, the defendant's inability to pay, the seriousness and gravity of the offense and the circumstances of its commission, any economic gain derived by the defendant as a result of the crime, the extent to which any other person suffered any losses as a result of the crime, and the number of victims involved in the crime. Those losses may include

pecuniary losses to the victim or his or her dependents as well as intangible losses, such as psychological harm caused by the crime. Consideration of a defendant's inability to pay may include his or her future earning capacity. A defendant shall bear the burden of demonstrating his or her inability to pay. Express findings by the court as to the factors bearing on the amount of the fine shall not be required. A separate hearing for the fine shall not be required.

(e) The restitution fine shall not be subject to penalty assessments as provided in Section 1464, and shall be deposited in the Restitution Fund in the State Treasury.

(f) In every case in which a victim has suffered economic loss as a result of the defendant's conduct, the court shall require that the defendant make restitution to the victim or victims in an amount established by court order, based on the amount of loss claimed by the victim or victims or any other showing to the court. If the amount of loss cannot be ascertained at the time of sentencing, the restitution order shall include a provision that the amount shall be determined at the direction of the court. The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states them on the record.

(1) The defendant has the right to a hearing before a judge to dispute the determination of the amount of restitution. The court may modify the amount, on its own motion or on the motion of the district attorney, the victim or victims, or the defendant. If a motion is made for modification of a restitution order, the victim shall be notified of that motion at least 10 days prior to the proceeding held to decide the motion.

(2) Determination of the amount of restitution ordered pursuant to this subdivision shall not be affected by the indemnification or subrogation rights of any third party. Restitution ordered pursuant to this subdivision shall be ordered to be deposited to the Restitution Fund to the extent that the victim, as defined in subdivision (k), has received assistance from the Victim Compensation Program pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(3) To the extent possible, the restitution order shall be prepared by the sentencing court, shall identify each victim and each loss to which it pertains, and shall be of a dollar amount that is sufficient to fully reimburse the victim or victims for every determined economic loss incurred as the result of the defendant's criminal conduct, including, but not limited to, all of the following:

(A) Full or partial payment for the value of stolen or damaged property. The value of stolen or damaged property shall be the replacement cost of like property, or the actual cost of repairing the property when repair is possible.

(B) Medical expenses.

(C) Mental health counseling expenses.

(D) Wages or profits lost due to injury incurred by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, while caring for the injured minor. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(E) Wages or profits lost by the victim, and if the victim is a minor, wages or profits lost by the minor's parent, parents, guardian, or guardians, due to time spent as a witness or in assisting the police or prosecution. Lost wages shall include any commission income as well as any base wages. Commission income shall be established by evidence of commission income during the 12-month period prior to the date of the crime for which restitution is being ordered, unless good cause for a shorter time period is shown.

(F) Noneconomic losses, including, but not limited to, psychological harm, for felony violations of Section 288.

(G) Interest, at the rate of 10 percent per annum, that accrues as of the date of sentencing or loss, as determined by the court.

(H) Actual and reasonable attorney's fees and other costs of collection accrued by a private entity on behalf of the victim.

(I) Expenses incurred by an adult victim in relocating away from the defendant, including, but not limited to, deposits for utilities and telephone service, deposits for rental housing, temporary lodging and food expenses, clothing, and personal items. Expenses incurred pursuant to this section shall be verified by law enforcement to be necessary for the personal safety of the victim or by a mental health treatment provider to be necessary for the emotional well-being of the victim.

(J) Expenses to install or increase residential security incurred related to a crime, as defined in subdivision (c) of Section 667.5, including, but not limited to, a home security device or system, or replacing or increasing the number of locks.

(K) Expenses to retrofit a residence or vehicle, or both, to make the residence accessible to or the vehicle operational by the victim, if the victim is permanently disabled, whether the disability is partial or total, as a direct result of the crime.

(4) (A) If, as a result of the defendant's conduct, the Restitution Fund has provided assistance to or on behalf of a victim or derivative victim pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code, the amount of assistance provided shall be presumed to be a direct result of the defendant's

criminal conduct and shall be included in the amount of the restitution ordered.

(B) The amount of assistance provided by the Restitution Fund shall be established by copies of bills submitted to the California Victim Compensation and Government Claims Board reflecting the amount paid by the board and whether the services for which payment was made were for medical or dental expenses, funeral or burial expenses, mental health counseling, wage or support losses, or rehabilitation. Certified copies of these bills provided by the board and redacted to protect the privacy and safety of the victim or any legal privilege, together with a statement made under penalty of perjury by the custodian of records that those bills were submitted to and were paid by the board, shall be sufficient to meet this requirement.

(C) If the defendant offers evidence to rebut the presumption established by this paragraph, the court may release additional information contained in the records of the board to the defendant only after reviewing that information in camera and finding that the information is necessary for the defendant to dispute the amount of the restitution order.

(5) Except as provided in paragraph (6), in any case in which an order may be entered pursuant to this subdivision, the defendant shall prepare and file a disclosure identifying all assets, income, and liabilities in which the defendant held or controlled a present or future interest as of the date of the defendant's arrest for the crime for which restitution may be ordered. The financial disclosure statements shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed by the defendant upon a form approved or adopted by the Judicial Council for the purpose of facilitating the disclosure. Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty.

(6) A defendant who fails to file the financial disclosure required in paragraph (5), but who has filed a financial affidavit or financial information pursuant to subdivision (c) of Section 987, shall be deemed to have waived the confidentiality of that affidavit or financial information as to a victim in whose favor the order of restitution is entered pursuant to subdivision (f). The affidavit or information shall serve in lieu of the financial disclosure required in paragraph (5), and paragraphs (7) to (10), inclusive, shall not apply.

(7) Except as provided in paragraph (6), the defendant shall file the disclosure with the clerk of the court no later than the date set for the defendant's sentencing, unless otherwise directed by the court. The

disclosure may be inspected or copied as provided by subdivision (b), (c), or (d) of Section 1203.05.

(8) In its discretion, the court may relieve the defendant of the duty under paragraph (7) of filing with the clerk by requiring that the defendant's disclosure be submitted as an attachment to, and be available to, those authorized to receive the following:

(A) Any report submitted pursuant to subparagraph (C) of paragraph (2) of subdivision (b) of Section 1203 or subdivision (g) of Section 1203.

(B) Any stipulation submitted pursuant to paragraph (4) of subdivision (b) of Section 1203.

(C) Any report by the probation officer, or any information submitted by the defendant applying for a conditional sentence pursuant to subdivision (d) of Section 1203.

(9) The court may consider a defendant's unreasonable failure to make a complete disclosure pursuant to paragraph (5) as any of the following:

(A) A circumstance in aggravation of the crime in imposing a term under subdivision (b) of Section 1170.

(B) A factor indicating that the interests of justice would not be served by admitting the defendant to probation under Section 1203.

(C) A factor indicating that the interests of justice would not be served by conditionally sentencing the defendant under Section 1203.

(D) A factor indicating that the interests of justice would not be served by imposing less than the maximum fine and sentence fixed by law for the case.

(10) A defendant's failure or refusal to make the required disclosure pursuant to paragraph (5) shall not delay entry of an order of restitution or pronouncement of sentence. In appropriate cases, the court may do any of the following:

(A) Require the defendant to be examined by the district attorney pursuant to subdivision (h).

(B) If sentencing the defendant under Section 1170, provide that the victim shall receive a copy of the portion of the probation report filed pursuant to Section 1203.10 concerning the defendant's employment, occupation, finances, and liabilities.

(C) If sentencing the defendant under Section 1203, set a date and place for submission of the disclosure required by paragraph (5) as a condition of probation or suspended sentence.

(11) If a defendant has any remaining unpaid balance on a restitution order or fine 120 days prior to his or her scheduled release from probation or 120 days prior to his or her completion of a conditional sentence, the defendant shall prepare and file a new and updated financial disclosure identifying all assets, income, and liabilities in which the defendant holds or controls or has held or controlled a present or future interest

during the defendant's period of probation or conditional sentence. The financial disclosure shall be made available to the victim and the board pursuant to Section 1214. The disclosure shall be signed and prepared by the defendant on the same form as described in paragraph (5). Any defendant who willfully states as true any material matter that he or she knows to be false on the disclosure required by this subdivision is guilty of a misdemeanor, unless this conduct is punishable as perjury or another provision of law provides for a greater penalty. The financial disclosure required by this paragraph shall be filed with the clerk of the court no later than 90 days prior to the defendant's scheduled release from probation or completion of the defendant's conditional sentence.

(g) The court shall order full restitution unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record. A defendant's inability to pay shall not be considered a compelling and extraordinary reason not to impose a restitution order, nor shall inability to pay be a consideration in determining the amount of a restitution order.

(h) The district attorney may request an order of examination pursuant to the procedures specified in Article 2 (commencing with Section 708.110) of Chapter 6 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure, in order to determine the defendant's financial assets for purposes of collecting on the restitution order.

(i) A restitution order imposed pursuant to subdivision (f) shall be enforceable as if the order were a civil judgment.

(j) The making of a restitution order pursuant to subdivision (f) shall not affect the right of a victim to recovery from the Restitution Fund as otherwise provided by law, except to the extent that restitution is actually collected pursuant to the order. Restitution collected pursuant to this subdivision shall be credited to any other judgments for the same losses obtained against the defendant arising out of the crime for which the defendant was convicted.

(k) For purposes of this section, ''victim'' shall include all of the following:

(1) The immediate surviving family of the actual victim.

(2) Any corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity when that entity is a direct victim of a crime.

(3) Any person who has sustained economic loss as the result of a crime and who satisfies any of the following conditions:

(A) At the time of the crime was the parent, grandparent, sibling, spouse, child, or grandchild of the victim.

(B) At the time of the crime was living in the household of the victim.

(C) At the time of the crime was a person who had previously lived in the household of the victim for a period of not less than two years in a relationship substantially similar to a relationship listed in subparagraph (A).

(D) Is another family member of the victim, including, but not limited to, the victim's fiance or fiancee, and who witnessed the crime.

(E) Is the primary caretaker of a minor victim.

(4) Any person who is eligible to receive assistance from the Restitution Fund pursuant to Chapter 5 (commencing with Section 13950) of Part 4 of Division 3 of Title 2 of the Government Code.

(*l*) At its discretion, the board of supervisors of any county may impose a fee to cover the actual administrative cost of collecting the restitution fine, not to exceed 10 percent of the amount ordered to be paid, to be added to the restitution fine and included in the order of the court, the proceeds of which shall be deposited in the general fund of the county.

(m) In every case in which the defendant is granted probation, the court shall make the payment of restitution fines and orders imposed pursuant to this section a condition of probation. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation shall continue to be enforceable by a victim pursuant to Section 1214 until the obligation is satisfied.

(n) If the court finds and states on the record compelling and extraordinary reasons why a restitution fine or full restitution order should not be required, the court shall order, as a condition of probation, that the defendant perform specified community service, unless it finds and states on the record compelling and extraordinary reasons not to require community service in addition to the finding that restitution should not be required. Upon revocation of probation, the court shall impose restitution pursuant to this section.

(o) The provisions of Section 13963 of the Government Code shall apply to restitution imposed pursuant to this section.

(p) The court clerk shall notify the California Victim Compensation and Government Claims Board within 90 days of an order of restitution being imposed if the defendant is ordered to pay restitution to the board due to the victim receiving compensation from the Restitution Fund. Notification shall be accomplished by mailing a copy of the court order to the board, which may be done periodically by bulk mail or electronic mail.

SEC. 3. Section 1202.44 is added to the Penal Code, to read:

1202.44. In every case in which a person is convicted of a crime and a conditional sentence or a sentence that includes a period of probation is imposed, the court shall, at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional

probation revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4. This additional probation revocation restitution fine shall become effective upon the revocation of probation or of a conditional sentence, and shall not be waived or reduced by the court, absent compelling and extraordinary reasons stated on record. Probation revocation restitution fines shall be deposited in the Restitution Fund in the State Treasury.

SEC. 4. Section 1202.45 of the Penal Code is amended to read:

1202.45. In every case where a person is convicted of a crime and whose sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4. This additional parole revocation restitution fine shall be suspended unless the person's parole is revoked. Parole revocation restitution fine moneys shall be deposited in the Restitution Fund in the State Treasury.

SEC. 5. Section 1214 of the Penal Code is amended to read:

1214. (a) If the judgment is for a fine, including a restitution fine ordered pursuant to Section 1202.4, 1202.44, or 1202.45, or Section 1203.04 as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, with or without imprisonment, or a diversion restitution fee ordered pursuant to Section 1001.90, the judgment may be enforced in the manner provided for the enforcement of money judgments generally. Any portion of a restitution fine or restitution fee that remains unsatisfied after a defendant is no longer on probation or parole or has completed diversion is enforceable by the California Victim Compensation and Government Claims Board pursuant to this section. Notwithstanding any other provision of law prohibiting disclosure, the state, as defined in Section 900.6 of the Government Code, a local public entity, as defined in Section 900.4 of the Government Code, or any other entity, may provide the California Victim Compensation and Government Claims Board any and all information to assist in the collection of unpaid portions of a restitution fine for terminated probation or parole cases, or of a restitution fee for completed diversion cases. For purposes of the preceding sentence, ''state, as defined in Section 900.6 of the Government Code,'' and ''any other entity'' shall not include the Franchise Tax Board.

(b) In any case in which a defendant is ordered to pay restitution, the order to pay restitution (1) is deemed a money judgment if the defendant was informed of his or her right to have a judicial determination of the amount and was provided with a hearing, waived a hearing, or stipulated to the amount of the restitution ordered, and (2) shall be fully enforceable

by a victim as if the restitution order were a civil judgment, and enforceable in the same manner as is provided for the enforcement of any other money judgment. Upon the victim's request, the court shall provide the victim in whose favor the order of restitution is entered with a certified copy of that order and a copy of the defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. The court also shall provide this information to the district attorney upon request in connection with an investigation or prosecution involving perjury or the veracity of the information contained within the defendant's financial disclosure. In addition, upon request, the court shall provide the California Victim Compensation and Government Claims Board with a certified copy of any order imposing a restitution fine or order and a copy of the defendant's disclosure pursuant to paragraph (4) of subdivision (f) of Section 1202.4, affidavit or information pursuant to paragraph (5) of subdivision (f) of Section 1202.4, or report pursuant to paragraph (7) of subdivision (f) of Section 1202.4. A victim shall have access to all resources available under the law to enforce the restitution order, including, but not limited to, access to the defendant's financial records, use of wage garnishment and lien procedures, information regarding the defendant's assets, and the ability to apply for restitution from any fund established for the purpose of compensating victims in civil cases. Any portion of a restitution order that remains unsatisfied after a defendant is no longer on probation or parole is enforceable by the victim pursuant to this section. Victims and the California Victim Compensation and Government Claims Board shall inform the court whenever an order to pay restitution is satisfied.

(c) Except as provided in subdivision (d), and notwithstanding the amount in controversy limitation of Section 85 of the Code of Civil Procedure, a restitution order or restitution fine that was imposed pursuant to Section 1202.4 in any of the following cases may be enforced in the same manner as a money judgment in a limited civil case:

(1) In a misdemeanor case.

(2) In a case involving violation of a city or town ordinance.

(3) In a noncapital criminal case where the court has received a plea of guilty or nolo contendere.

(d) Chapter 3 (commencing with Section 683.010) of Division 1 of Title 9 of Part 2 of the Code of Civil Procedure shall not apply to a judgment for any fine or restitution ordered pursuant to Section 1202.4 or Section 1203.04 as operative on or before August 2, 1995, or Section 13967 of the Government Code, as operative on or before September 28, 1994, or to a diversion restitution fee ordered pursuant to Section 1001.90.

SEC. 6. Section 2085.5 of the Penal Code is amended to read:

2085.5. (a) In any case in which a prisoner owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the fine amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law, and shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(b) In any case in which a prisoner owes a restitution order imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or subdivision (f) of Section 1202.4, the Director of Corrections shall deduct a minimum of 20 percent or the balance owing on the order amount, whichever is less, up to a maximum of 50 percent from the wages and trust account deposits of a prisoner, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victim Compensation Program, the director shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. No deductions shall be made on behalf of victims who have not filed an application with the Victim Compensation Program. The sentencing court shall be provided a record of the payments made to victims and of the payments deposited to the Restitution Fund pursuant to this subdivision.

(c) The director shall deduct and retain from the wages and trust account deposits of a prisoner, unless prohibited by federal law, an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (a) or (b). The director shall deduct and retain from any prisoner settlement or trial award, an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (j), unless prohibited by federal law. The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future

reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(d) In any case in which a parolee owes a restitution fine imposed pursuant to subdivision (a) of Section 13967 of the Government Code, as operative prior to September 28, 1994, subdivision (b) of Section 730.6 of the Welfare and Institutions Code, or subdivision (b) of Section 1202.4, the Director of Corrections may collect from the parolee any moneys owing on the restitution fine amount, unless prohibited by federal law. The director shall transfer that amount to the California Victim Compensation and Government Claims Board for deposit in the Restitution Fund in the State Treasury. Any amount so deducted shall be credited against the amount owing on the fine. The sentencing court shall be provided a record of the payments.

(e) In any case in which a parolee owes a direct order of restitution, imposed pursuant to subdivision (c) of Section 13967 of the Government Code, as operative prior to September 28, 1994, subdivision (h) of Section 730.6 of the Welfare and Institutions Code, or paragraph (3) of subdivision (a) of Section 1202.4, the Director of Corrections may collect from the parolee any moneys owing, unless prohibited by federal law. If the restitution is owed to a person who has filed an application with the Victim Compensation Program, the director shall transfer that amount to the California Victim Compensation and Government Claims Board for direct payment to the victim, or payment shall be made to the Restitution Fund to the extent that the victim has received assistance pursuant to that program. No deductions shall be made on behalf of victims who have not filed an application with the Victim Compensation Program. The sentencing court shall be provided a record of the payments made by the offender pursuant to this subdivision.

(f) The director may deduct and retain from any moneys collected from parolees an administrative fee that totals 10 percent of any amount transferred to the California Victim Compensation and Government Claims Board pursuant to subdivision (d) or (e), unless prohibited by federal law. The director shall deduct and retain from any settlement or trial award of a parolee an administrative fee that totals 5 percent of any amount paid from the settlement or award to satisfy an outstanding restitution order or fine pursuant to subdivision (j), unless prohibited by federal law. The director shall deposit the administrative fee moneys in a special deposit account for reimbursing administrative and support costs of the restitution program of the Department of Corrections. The director, at his or her discretion, may retain any excess funds in the special deposit account for future reimbursement of the department's administrative and support costs for the restitution program or may transfer all or part of the excess funds for deposit in the Restitution Fund.

(g) When a prisoner has both a restitution fine and a restitution order from the sentencing court, the Department of Corrections shall collect the restitution order first pursuant to subdivision (b).

(h) When a parolee has both a restitution fine and order from the sentencing court, the Department of Corrections may collect the restitution order first, pursuant to subdivision (e).

(i) If an inmate is housed at an institution that requires food to be purchased from the institution canteen for unsupervised overnight visits, and if the money for the purchase of this food is received from funds other than the inmate's wages, that money shall be exempt from restitution deductions. This exemption shall apply to the actual amount spent on food for the visit up to a maximum of fifty dollars ($50) for visits that include the inmate and one visitor, seventy dollars ($70) for visits that include the inmate and two or three visitors, and eighty dollars ($80) for visits that include the inmate and four or more visitors.

(j) Any compensatory or punitive damages awarded by trial or settlement to any inmate or parolee in connection with a civil action brought against any federal, state, or local jail, prison, or correctional facility, or any official or agent thereof, shall be paid directly, after payment of reasonable attorney's fees and litigation costs approved by the court, to satisfy any outstanding restitution orders or restitution fines against that person. The balance of any award shall be forwarded to the payee after full payment of all outstanding restitution orders and restitution fines, subject to subdivisions (c) and (f). The Department of Corrections shall make all reasonable efforts to notify the victims of the crime for which that person was convicted concerning the pending payment of any compensatory or punitive damages.

(k) (1) Amounts transferred to the California Victim Compensation and Government Claims Board for payment of direct orders of restitution shall be paid to the victim within 60 days from the date the restitution revenues are received by the California Victim Compensation and Government Claims Board. If the restitution payment to a victim is less than fifty dollars ($50), then payment need not be forwarded to that victim until the payment reaches fifty dollars ($50) or until 180 days from the date the first payment is received, whichever occurs sooner.

(2) In any case in which a victim cannot be located, the restitution revenues received by the California Victim Compensation and Government Claims Board on behalf of the victim shall be held in trust in the Restitution Fund until the end of the state fiscal year subsequent to the state fiscal year in which the funds were deposited or until the time that the victim has provided current address information, whichever occurs sooner. Amounts remaining in trust at the end of the specified period of time shall revert to the Restitution Fund.

(3) Any victim failing to provide a current address within the period of time specified in paragraph (2) may provide documentation to the Department of Corrections, which in turn shall verify that moneys were in fact collected on behalf of the victim. Upon receipt of that verified information from the Department of Corrections, the California Victim Compensation and Government Claims Board shall transmit the restitution revenues to the victim in accordance with the provisions of subdivision (b).

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

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectuate the collection of revenue for the Restitution Fund and to pay claims submitted by victims of crime to end their financial hardship as soon as possible, it is necessary for this act to take immediate effect.

CHAPTER 224

An act to amend Sections 4750.7 and 31164 of, to add Section 31012 to, and to repeal Sections 532, 2804.6, and 2813 of, the Public Resources Code, relating to public resources, and making an appropriation therefor.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 532 of the Public Resources Code is repealed.

SEC. 2. Section 2804.6 of the Public Resources Code is repealed.

SEC. 3. Section 2813 of the Public Resources Code is repealed.

SEC. 4. Section 4750.7 of the Public Resources Code is amended to read:

4750.7. (a) (1) The Department of Forestry and Fire Protection shall expend funds, subject to appropriation in the Budget Act, on

sudden oak death management activities pursuant to this section. The department shall take into account the recommendations of the task force for the expenditure of the funds.

(2) The department shall expend the funds appropriated pursuant to this subdivision to take various actions to control the spread of Phytophthora ramorum, to find effective treatments to prevent or eliminate sudden oak death, and to assist state and local agencies and private property owners to perform, identify, remove, and appropriately dispose of trees and plants that have become infected or expired due to sudden oak death.

(3) (A) Of the amount to be expended pursuant to this subdivision, the department shall expend the amount of funds it deems necessary on sudden oak death monitoring including, but not limited to, open-space surveys, roadside surveys, aerial surveys, monitoring technique workshops, development of baseline information on the distribution, condition, and mortality rates of oaks in California, and maintaining an up-to-date geographic information system database.

(B) (i) Except as provided in clause (ii), of the amount to be expended pursuant to this subdivision, the department shall expend not less than 35 percent on sudden oak death management activities pursuant to contracts with counties, which may include, but need not be limited to, hazard tree assessment, contracts with counties for hazard tree removal pursuant to the process established by clause (iii), biomass utilization, assessment and management of restoration and mitigation options, establishment and operation of demonstration projects, including green waste treatment facilities, and grants to counties for oak tree restoration pursuant to the process established by clause (iv). The department shall first endeavor to contract directly with the affected county. If the county declines to enter into a contract, or if the county has not commenced the process established by clause (iii) within 60 days of notification by the department of the need for a contract with the affected county, the department may enter into one or more contracts with one or more other appropriate entities at the local level.

(ii) Of the amount of funds appropriated in the Budget Act of 2002 that is expended under this subdivision, the department shall expend not less than seven hundred thousand dollars ($700,000) pursuant to clause (i).

(iii) The department shall utilize a portion of the funds to be expended pursuant to this subparagraph to contract with affected counties for the removal of trees that have died or are dying as a result of sudden oak death. An affected county may apply to the department for a contract, and shall provide the department with an action plan for the removal and disposition of affected trees within its jurisdiction. The department shall approve or deny an affected county's action plan in a timely manner. If

the department approves the action plan of an affected county, the department may enter into a contract with that county. The department shall consider the recommendation of the task force prior to approving or denying a county action plan and prior to entering into a contract under this clause. An action plan approved by the board prior to January 1, 2003, is deemed sufficient to comply with this section.

(iv) The department shall utilize a portion of the funds to be expended pursuant to this subparagraph to contract with affected counties for activities designed to restore oak trees in areas that have been affected by sudden oak death. An affected county may apply to the department for these funds, and provide the department with an action plan for the restoration of affected trees within its jurisdiction. The department shall approve or deny an affected county's action plan in a timely manner. If the department approves the action plan of an affected county, the department may enter into a contract with that county. The department shall consider the recommendations of the task force prior to approving or denying a county action plan and prior to entering into a contract under this clause. The department may reallocate to other sudden oak death management activities authorized under this section any amount allocated under this subdivision and not expended within one year after the date it was originally allocated.

(C) Of the amount to be expended pursuant to this subdivision, the department may expend the amount of funds it deems necessary on research activities, including, but not limited to, research on forest pathology and Phytophthora ecology, forest insects associated with oak decline, urban forestry and arboriculture, forest ecology, fire management and silviculture, genetic resistance, ecosystem impacts, and landscape ecology, epidemiology, and monitoring techniques.

(D) Of the amount to be expended pursuant to this subdivision, the department may expend the amount of funds it deems necessary on education activities, including, but not limited to, support for two regional education project coordinators, one public information officer, Internet Web site design and maintenance training, and development and distribution of educational materials on sudden oak death for homeowners, arborists, urban foresters, park managers, public works personnel, utility crews, recreationists, nursery workers, landscapers, naturalists, and firefighting personnel.

(E) Of the amount to be expended pursuant to this subdivision, the department may expend the amount of funds it deems necessary on fire protection and prevention activities, including, but not limited to, assessing fire risk in heavily impacted areas, inspecting property to encourage increased clearing of vegetation in heavily infested areas and to mitigate the fire risk, producing and distributing safety information

for firefighters working in areas affected by sudden oak death, and treating vegetation to prevent fire.

(F) Of the amount to be expended pursuant to this subdivision, the department may expend the amount of funds it deems necessary to fund administrative activities necessary to oversee the activities listed in subparagraphs (A) to (E), inclusive, including, but not limited to, an overall statewide task force coordinator, miscellaneous expenses associated with the operation of the task force, and staff of the department to carry out contract preparation, administration, and fiscal audits of contract expenditures.

(b) Of the amount to be expended under this section, the department may allocate funds to the Department of Food and Agriculture for regulatory activities, including, but not limited to, nursery surveys and other regulatory enforcement activities performed by agricultural commissioners, diagnostic services, and public agency coordination efforts. Of the amount allocated to be expended under this subdivision, the department may expend the amount of funds it deems necessary to fund administrative activities necessary to oversee the activities listed in this subdivision.

SEC. 5. Section 31012 is added to the Public Resources Code, to read:

31012. (a) The Coastal Trust Fund is hereby established in the State Treasury, to receive and disburse funds paid to the conservancy in trust, subject to the right of recovery to fulfill the purposes of the trust, as provided in this section.

(b) (1) There is in the Coastal Trust Fund the San Francisco Bay Area Conservancy Program Account, which shall be expended solely for the purposes of Chapter 4.5 (commencing with Section 31160).

(2) The conservancy shall deposit in the San Francisco Bay Area Conservancy Program Account all funds received by the conservancy for the purposes of the San Francisco Bay Area Conservancy Program established under Chapter 4.5 (commencing with Section 31160), from sources other than the state or federal government and not provided for in subdivision (a) of Section 31164. These funds include, but are not limited to, private donations, fees, penalties, and local government contributions.

(c) (1) There is in the Coastal Trust Fund the Coastal Program Account. Funds in the Coastal Program Account shall be expended solely for their specified trust purposes.

(2) Upon approval of the Department of Finance, the conservancy shall deposit in the Coastal Program Account all funds paid to the conservancy in trust for purposes of this division, except those funds identified in paragraph (2) of subdivision (b). The funds that shall be deposited in the Coastal Program Account, upon that approval, include,

but are not limited to, funds that are paid to the conservancy in trust for purposes of mitigation, for settlement of litigation, instead of other conditions of coastal development permits or other regulatory entitlements, or for other trust purposes consistent with this division and specified by the terms of a gift or contract. Funds in the Coastal Program Account shall be separately accounted for according to their source and trust purpose. Funds may not be deposited in the Coastal Program Account without the Department of Finance's approval.

(d) Interest that accrues on funds in the Coastal Trust Fund shall be retained in the Coastal Trust Fund and available for expenditure by the conservancy for the trust purposes.

(e) The conservancy shall maintain separate accountings of funds within the Coastal Trust Fund, pursuant to its fiduciary duties, for the purpose of separating deposits and interest on those deposits, according to their trust purposes.

(f) Notwithstanding Section 13340 of the Government Code, all funds in the Coastal Trust Fund are continuously appropriated, without regard to fiscal year, to the conservancy to fulfill the trust purposes for which the payments of funds were made.

(g) The conservancy shall provide an annual accounting to the Department of Finance of the conservancy's expenditures from, and other activities related to, the Coastal Trust Fund.

SEC. 6. Section 31164 of the Public Resources Code is amended to read:

31164. (a) The San Francisco Bay Area Conservancy Program Account is hereby created in the State Coastal Conservancy Fund, for the purpose of depositing and disbursing funds, upon appropriation by the Legislature, for the administration and implementation of the San Francisco Bay Area Conservancy Program. All funds that are appropriated by the Legislature for the purposes of this chapter, and all reimbursements, proceeds of sale, or other money received by the conservancy for the purposes of this chapter and derived from projects funded from this account shall be deposited in this account. Interest on funds in this account shall accrue to the General Fund. The conservancy shall account for all deposits and reimbursements of funds in this account.

(b) Funds that are derived from other sources, exclusive of state or federal funds, for the purposes of this chapter, including, but not limited to, private donations, fees, penalties, and local government contributions, shall be deposited in the San Francisco Bay Area Conservancy Program Account in the Coastal Trust Fund pursuant to Section 31012.

SEC. 7. (a) On January 1, 2004, all funds deposited in the subaccount of the San Francisco Bay Area Conservancy Program

Account established pursuant to subparagraph (A) of paragraph (1) of subdivision (b) of Section 31164, as amended by Section 146 of Chapter 135 of the Statutes of 2000, shall be transferred to the San Francisco Bay Area Conservancy Program Account in the State Coastal Conservancy Fund.

(b) On January 1, 2004, all funds deposited in the subaccount of the San Francisco Bay Area Conservancy Program Account established pursuant to subparagraph (B) of paragraph (1) of subdivision (b) of Section 31164, as amended by Section 146 of Chapter 135 of the Statutes of 2000, shall be transferred to the San Francisco Bay Area Conservancy Program Account in the Coastal Trust Fund.

(c) On January 1, 2004, all funds deposited in the conservancy's accounts in the Special Deposit Fund established by Section 16370 of the Government Code shall be transferred to the Coastal Program Account in the Coastal Trust Fund.

(d) The funds transferred pursuant to this section are subject to all encumbrances on those funds made prior to January 1, 2004, and to all legal restrictions on their use other than by state statute.

CHAPTER 225

An act to amend Sections 14030 and 14070 of, and to repeal Sections 14202 and 28506 of, the Corporations Code, to amend Sections 8277.6, 68084, 88500, 88510, and 89440 of the Education Code, to amend Section 22056 of the Financial Code, to amend Sections 492, 705, and 78486 of the Food and Agricultural Code, to amend Sections 7076, 7086, 8684.2, 8899.12, 14041, 14998.3, 14998.4, 14998.6, 14998.7, 14998.8, 14998.9, 15710, 63024, 65040.9, 65040.12, 66031, and 91550 of, to add Sections 11008.2 and 11008.5 to, and to repeal Sections 8684, 8899.16, 8899.21, 11347.6, and 66036 of, the Government Code, to amend Sections 11998.1, 18949.6, 25395.20, 25395.23, 25395.41, 34053, 37981, 37982, 37983, 37984, 39752, 40448.6, 41503.6, 41865, 50887.5, and 124850 of, and to amend and renumber Sections 35989 and 35990 of, the Health and Safety Code, to amend Section 1831 of the Military and Veterans Code, to amend Section 2802 of the Penal Code, to amend Sections 25696, 31306, 36300, 42021, and 42024 of, and to repeal Section 42022 of, the Public Resources Code, to amend Section 883 of the Public Utilities Code, to amend Sections 17053.74 and 23622.7 of the Revenue and Taxation Code, and to amend Sections 335, 10200, 10202.5, 10205, 10206, 10525, 10529, 11010, 11011, 12112, 12151, 15076, 15076.5, and 15077 of, and to repeal Section 10213.5 of,

the Unemployment Insurance Code, relating to state government, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 14030 of the Corporations Code is amended to read:

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

SEC. 2. Section 14070 of the Corporations Code is amended to read:

14070. (a) The corporate guarantee shall be backed by funds on deposit in the corporation's corporate fund account, or by receivables due from funds loaned from the corporation's trust fund account to another fund in state government as directed by the Legislature and the Department of Finance.

(b) Loan guarantees shall be secured by a reserve of at least 25 percent to be determined by the director, unless the office authorizes a higher leverage ratio for an individual corporation pursuant to subdivision (c) of Section 14037.

(c) The expansion fund and corporate accounts shall be used exclusively to guarantee obligations and pay the administrative costs of the corporations. A corporation located in a rural area may utilize the funds for direct lending to farmers as long as at least 90 percent of the corporate fund farm loans, calculated by dollar amount, and all expansion fund farm loans are guaranteed by the United States Farmers Home Administration. The amount of funds available for direct farm lending shall be determined by the executive director. In its capacity as a direct lender, the corporation may sell in the secondary market the

guaranteed portion of each loan so as to raise additional funds for direct lending. The agency shall issue regulations governing these direct loans, including the maximum amount of these loans.

(d) In furtherance of the purposes of this part, up to one-half of the corporate funds may be used to guarantee loans utilized to establish a Business and Industrial Development Corporation (BIDCO) under Division 15 (commencing with Section 33000) of the Financial Code.

(e) To execute the direct loan programs established in this chapter, the office may loan trust funds to a corporation located in a rural area for the express purpose of lending those funds to an identified borrower. The loan by the office to the corporation shall be on terms similar to the loan between the corporation and the borrower. The amount of the loan may be in excess of the amount of a loan to any individual farm borrower, but actual disbursements pursuant to the office loan agreement shall be required to be supported by a loan agreement between the farm borrower and the corporation in an amount at least equal to the requested disbursement. The loan between the office and the corporation shall be evidenced by a credit agreement. In the event that any loan between the corporation and borrower is not guaranteed by a governmental agency, the portion of the credit agreement attributable to that loan shall be secured by assignment of any note, executed in favor of the corporation by the borrower to the office. The terms and conditions of the credit agreement shall be similar to the loan agreement between the corporation and the borrower, which shall be collateralized by the note between the corporation and the borrower. In the absence of fraud on the part of the corporation, the liability of the corporation to repay the loan to the office is limited to the repayment received by the corporation from the borrower except in a case where the Farmers Home Administration requires exposure by the corporation in rule or regulation. The corporation may use trust funds for loan repayment to the office if the corporation has exhausted a loan loss reserve created for this purpose. Interest and principal received by the office from the corporation shall be deposited into the same account from which the funds were originally borrowed.

(f) Upon the approval of the director, a corporation shall be authorized to borrow trust funds from the office for the purpose of relending those funds to small businesses. A corporation shall demonstrate to the director that it has the capacity to administer a direct loan program, and has procedures in place to limit the default rate for loans to startup businesses. Not more than 25 percent of any trust fund shall be used for the direct lending established pursuant to this subdivision. A loan to a corporation shall not exceed the amount of funds likely to be lent to small businesses within three months following the loan to the corporation. The maximum loan amount to a small business is fifty thousand dollars

($50,000). In the absence of fraud on the part of the corporation, the repayment obligation pursuant to the loan to the corporation shall be limited to the amount of funds received by the corporation for the loan to the small business and any other funds received from the office that are not disbursed. The corporation shall be authorized to charge a fee to the small business borrower, in an amount determined by the office pursuant to regulation. The program provided for in this subdivision shall be available in all geographic areas of the state.

SEC. 3. Section 14202 of the Corporations Code is repealed.

SEC. 4. Section 28506 of the Corporations Code is repealed.

SEC. 5. Section 8277.6 of the Education Code is amended to read:

8277.6. (a) For purposes of this section ''department'' means the Department of Housing and Community Development.

(b) The department shall administer the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund. The department may administer the funds directly, through interagency agreements with other state agencies, through contracts with public or private entities, or through any combination thereof. If the department determines that a public or private entity is capable of making child care and development facilities loans or loan guarantees, the department may delegate the authority to review and approve those loans or guarantees to the public or private entity. The department is authorized to enter into interagency agreements to carry out the purposes of this section and Section 8277.5 by utilizing the services of small business financial development corporations established pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of the Corporations Code. Toward this end, the department is authorized to transfer funds from the Child Care and Development Facilities Direct Loan Fund to the California Economic Development Grant and Loan Fund established by Section 15327 of the Government Code and to transfer funds from the Child Care and Development Facilities Loan Guaranty Fund to the Small Business Expansion Fund established by Section 14030 of the Corporations Code. Those funds shall be deposited into a Child Care Direct Loan Fund Account and a Child Care Loan Guaranty Fund Account hereby established in the respective funds. Notwithstanding anything to the contrary in Chapter 1 (commencing with Section 15310) of Part 6.7 of Division 3 of Title 2 of the Government Code and Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of the Corporations Code, the funds in these accounts shall be administered in compliance with the requirements of this section and Section 8277.5.

(c) Eligible applicants for the loan guaranty program and the direct loan program shall include, but not be limited to, sole proprietorships, partnerships, proprietary and nonprofit corporations, and local public

agencies that are responsible for contracting with or providing licensed child care and development services. Eligible facilities shall include licensed full-day and part-day child care and development facilities and licensed large family day care homes as described in Section 1597.465 of the Health and Safety Code, and licensed small family day care homes as described in Section 1597.44 of the Health and Safety Code.

(d) Loan guarantees and direct loans for family child care homes shall not be made for the purpose of purchasing a home or any real property.

(e) The State Department of Education shall provide input regarding program priorities that shall be considered in the funding of applications by the department. These priorities shall include, but are not limited to, the following:

(1) Geographic priorities based on the extent of need for child care and development supply-building efforts in different parts of the state.

(A) Not less than 30 percent of the loan guarantee and direct loan obligations shall benefit providers located in rural areas, as defined in subparagraph (B). If the amount of qualified applications from rural providers is insufficient to satisfy this requirement, the excess capacity reserved for rural providers may be made available to other qualified applications according to the policies and procedures of the department. The remaining 70 percent of funds shall be available to rural or urban areas and other priorities in accordance with this subdivision.

(B) For purposes of subdivision (a), rural communities are defined by any county with fewer than 400 residents per square mile.

(2) Age priorities based on the extent of need for child care and development supply-building efforts for children of different age groups.

(3) Income priorities shall include families transitioning to work or other lower income families. For purposes of this section, ''lower income'' shall have the same meaning as ''income eligible'' as set forth in Section 8263.1.

(4) Program priorities based on the extent of facilities needs among specific kinds of providers, including those that contract to administer state and federally funded child care and development programs administered by the State Department of Education, providers who have lost classrooms due to class size reduction or other state or local initiatives, or providers that need to expand to meet the needs of a child care initiative for recipients of aid under Chapter 3 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program.

(f) The program priorities shall reflect input from representatives of diverse sectors of the child care and development field, financial institutions, local planning councils, the Child Development Programs Advisory Committee, and the State Department of Social Services for

purposes of identifying communities with high percentages of recipients of aid under Chapter 3 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code, or any successor program, who need child care to meet work requirements. As part of its annual report to the Legislature, required pursuant to Section 50408 of the Health and Safety Code, the department shall assess and report, after consultation with the State Department of Education, on the performance, effectiveness, and fiscal standing of the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund. The report shall include information on the number of defaults, the types of facilities in default, and a review of the adequacy of the set-aside for rural areas specified in paragraph (1) of subdivision (e).

(g) The department shall adopt regulations and establish priorities, forms, policies and procedures for implementing and managing the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund and making the loan guarantees and direct loans authorized hereunder consistent with priorities provided by the State Department of Education. To the extent feasible, the department shall use applicant fees and points to cover its administrative costs. The department may utilize an amount of money from the Child Care and Development Facilities Loan Guaranty Fund and the Child Care and Development Facilities Direct Loan Fund, as appropriate, for reasonable administrative costs in any given fiscal year. Unless an appropriation for administrative costs is made in the annual Budget Act that exceeds the following limits, administrative expenditures shall not exceed 3 percent of the amount appropriated to each fund in the Budget Act of 1997.

(h) (1) The department shall adopt regulations to efficiently and effectively implement the microenterprise loan program described in this subdivision, including, but not limited to, the following:

(A) Making loans available from the Child Care and Development Facilities Direct Loan Fund to local microenterprise loan funds and other lenders who may relend the funds in appropriate amounts to eligible small family day care home providers described in Section 1597.44 of the Health and Safety Code, large family day care home providers described in Section 1597.465 of the Health and Safety Code, and licensed child care and development facilities that serve up to 35 children.

(B) Authorizing a specified amount of guarantees of small loans by local microenterprise loan funds and other lenders serving eligible small family day care home providers described in Section 1597.44 of the Health and Safety Code, large family day care home providers described

in Section 1597.465 of the Health and Safety Code, and licensed child care and development facilities that serve up to 35 children.

(2) Notwithstanding anything to the contrary in this section or Section 8277.5, a loan made pursuant to this subdivision shall not be made for less than five thousand dollars ($5,000) or for more than fifty thousand dollars ($50,000) and shall not be subject to the 75-percent investment restriction contained in paragraph (2) of subdivision (e) of Section 8277.5.

(i) The department may adopt regulations for the purposes of this section as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, including Section 11349.6 of the Government Code, the adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1 of the Government Code. Notwithstanding subdivision (e) of Section 11346.1, any regulation adopted pursuant to this section shall not remain in effect more than 180 days unless the department complies with all provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 6. Section 68084 of the Education Code is amended to read:

68084. (a) A parent who is a federal civil service employee and his or her natural or adopted dependent children are entitled to resident classification at the California State University, the University of California, or a California community college if the parent has moved to this state as a result of a military mission realignment action that involves the relocation of at least 100 employees. This classification shall continue until the student is entitled to be classified as a resident pursuant to Section 68017, so long as the student continuously attends an institution of public higher education.

(b) It shall be the responsibility of the California Community Colleges, the California State University, and the University of California to certify qualifying military mission realignment actions under this section.

SEC. 7. Section 88500 of the Education Code is amended to read:

88500. The mission of the economic and workforce development program, subject to approval and amendment by the Board of Governors of the California Community Colleges, shall include, but not necessarily be limited to, all of the following:

(a) To advance California's economic growth and global competitiveness through high quality education and services focusing on continuous workforce improvement, technology deployment, and

business development, consistent with the current needs of the state's regional economies.

(b) To maximize and leverage the resources of the California Community Colleges to fulfill its role as the primary provider in fulfilling the vocational education and training needs of California business and industry.

(c) To work with representatives of business, labor, and professional trade associations to explore and develop new alternatives for assisting incumbent workers. A key objective is to enable incumbent workers to become more competitive in their region's labor market, increase competency, and identify career paths to economic self-sufficiency and lifelong access to good-paying jobs. This includes, but is not necessarily limited to, career ladder approaches.

(d) To collaborate with other state and local agencies, including partners under the federal Workforce Investment Act of 1998 (Public Law 105-220), and the Technology, Trade, and Commerce Agency, to deliver services that meet statewide and regional workforce, business development, technology transfer, and trade needs that attract, retain, and expand businesses.

(e) To develop local economic development agencies, the private sector, and labor and community groups, innovative solutions, as needed, in identified strategic priority areas, including, but not necessarily limited to, advanced transportation, biotechnology, small business, applied competitive technologies, including computer integrated manufacturing, production and continuous quality improvement, business and workforce improvement, environmental technologies, health care delivery, multimedia/entertainment, international trade, and workplace literacy. Strategic priority areas that may be explored if new or additional funding becomes available may include information technology, e-commerce and e-trade, and nanotechnology.

(f) To identify, acquire, and leverage community college and other vocational training resources when possible, to support local, regional, and statewide economic development.

(g) To create effective logistical, technical, and marketing infrastructure support for economic development activities within the California Community Colleges.

(h) To optimize access to community colleges' economic development services.

(i) To develop strategic public and private sector partnerships.

(j) To assist communities experiencing military base downsizing and closure.

SEC. 8. Section 88510 of the Education Code is amended to read:

88510. (a) The Board of Governors of the California Community Colleges and the Chancellor of the California Community Colleges may award grants to districts for leadership in accomplishing the mission and goals of the economic and workforce development program, as described in Section 88500.

(b) (1) The board of governors shall establish an advisory committee for the California Community Colleges Economic and Workforce Development Program and determine the membership, pursuant to paragraph (2). The advisory committee shall guide overall program development, recommend resource development and deployment, and recommend strategies for implementation and coordination of regional business resources. Based on new funding and information developed by the Chancellor of the California Community Colleges pursuant to subdivision (d) and forwarded to the advisory committee, the advisory committee shall make recommendations to the chancellor and the board of governors on whether new initiatives should be undertaken, and whether existing initiatives should continue to be funded at their existing levels, their funding increased or decreased, or their funding terminated.

(2) The membership of the advisory committee shall include representatives from labor; business; appropriate state agencies; a faculty representative; a classified employee representative; and one community college chief executive officer representative from each of the 10 regions of the California Community Colleges Economic and Workforce Development Program.

(3) The advisory committee shall be organized so that its work is workforce and business development driven, each leveraging the other to achieve economic development.

(c) The decision criteria for allocating funds to colleges shall take into account all of the following:

(1) Regional workforce and business development needs.

(2) Emerging industries, labor market growth sectors, and gaps in service provided by the community colleges of a region, as identified by the current regional business resource, assistance, and innovation network infrastructure with identified strategic priority areas.

(3) Performance of the college or district in the administration and achievement of proposed results of recently awarded economic development projects.

(4) For service delivery projects, the cost of organizing, administering, and delivering proposed services relative to the number of clients to be served and the expected benefits. For capacity building projects, showing how the capacity of the college is improved in order to deliver services to employers and students.

(5) Demonstrated benefit to the college and faculty resulting from the services provided for in subdivisions (a), (b), (c), (h), and (j) of Section 88531.

(d) The chancellor's office shall provide systemwide oversight and evaluation of the economic and workforce development program.

(e) The chancellor may establish program requirements and performance standards in the administration of the economic and workforce development program and distribute funds as appropriate to implement the program.

(f) The chancellor may provide technical assistance to community colleges for the purpose of improving the competitiveness of their proposals.

(g) Funds shall be awarded for the program on a competitive basis.

(h) The chancellor, in awarding short-term competitive funds, shall take into account colleges in economically distressed urban and rural areas, and colleges that have not previously been successful in the competitive bid process.

SEC. 9. Section 89440 of the Education Code is amended to read:

89440. (a) The Legislature hereby finds and declares all of the following:

(1) The biotechnology industry in California is a rapidly growing industry that will be a critical factor in the state's economic success in the new millennium.

(2) The California State University plays a significant role in the production and maintenance of the workforce for this rapidly growing industry.

(3) The California State University Program for Education and Research in Biotechnology was created in 1987 to provide a coordinated and amplified development of biotechnology research and education within the California State University, to foster competitiveness in the industry on both the state and national levels, to facilitate training of a sufficient number of biotechnology technicians and scientists, to catalyze technology transfer and enhance intellectual property protection, and to facilitate the acquisition and long-term maintenance of state-of-the-art biotechnology resource facilities.

(4) The program facilitates interdisciplinary cooperative activities between the biology and chemistry departments on all California State University campuses and between faculty and a number of allied academic and research units, including bioengineering, agricultural biotechnology, environmental and natural resources, molecular ecology, and marine biotechnology.

(5) The program conducts a number of activities, including a competitive applied research and education grants program, the upgrade of biotechnology instructional and research equipment, the development

of specialized training facilities, and involvement in secondary educator inservice and preservice biotechnological training.

(6) The California State University conducted a Bioscience Innovation and Training Center Feasibility Study to assess the feasibility of creating a multiuse technology innovation and training center in Pasadena that can serve as an anchor and catalyst for biotechnology enterprise growth in the Los Angeles region.

(7) The study was completed in December 2000, and concluded that there is strong demand for biotechnology workforce training, research, manufacturing, and incubation services that warrant the development of a bioscience in Pasadena. When Pasadena was evaluated against critical success factors for biotechnology community development, it scored highly on many factors, including a critical mass of cutting-edge research, accessibility to transportation, quality of life, experienced entrepreneurs, access to capital, and availability of a skilled workforce. The steering committee identified four main components for the proposed facility:

(A) Workforce training offering practical, hands-on learning experiences involving multidisciplinary, multilevel teams of researchers, technicians, production specialists, apprentices, and students.

(B) Core research laboratories and instrument beta testing coupled with process manufacturing.

(C) New business incubator space, including wet labs and shared entrepreneurial services and support.

(D) Bioinformatics (convergence of biology, mathematics, and computing) as a common theme running throughout the center.

(8) The Bioscience Innovation and Training Center Feasibility Study, conducted by the California State University, found that the development of a bioscience center in Pasadena is warranted.

(9) A successful biotechnology resource facility requires a partnership of the city, industry, and education partners, as well as public and private collaboration, in order to develop projects that leverage economic opportunities in the Los Angeles basin and support business throughout California.

(10) It is critical that, for a successful resource facility, the public and private sectors work together to achieve the following components: workforce training, research in core research laboratories, new business incubator space, and manufacturing.

(b) It is the intent of the Legislature to accomplish both of the following:

(1) To provide additional state funding, if state revenues allow, to the California State University to maintain the California State University Program for Education and Research in Biotechnology at a level that will

maintain and enhance its role in the preparation of the workforce in this critical industry.

(2) To provide additional state funding to the California State University for development of a bioscience center in Pasadena, subject to appropriation in the annual Budget Act, that would integrate research and innovation, applied workforce training, and incubation of new bioscience enterprise. The development of the bioscience center would include a partnership among local educational institutions, the local bioscience industry, and government. These funds shall be used for the development of a pilot bioinnovation workforce training program that bridges the gap between classroom instruction and workforce practice, using state-of-the-art instrumentation and real-world development projects, and for final site assessment to ensure due diligence prior to the selection of a final site.

SEC. 10. Section 22056 of the Financial Code is amended to read:

22056. This division does not apply to the California Infrastructure and Economic Development Bank, any program authorized pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, or to the California Integrated Waste Management Board.

SEC. 11. Section 492 of the Food and Agricultural Code is amended to read:

492. (a) The Legislature hereby creates the Food Biotechnology Task Force. The task force shall be cochaired by the Secretary of California Health and Human Services, and the Secretary of the California Department of Food and Agriculture. The task force shall consult with appropriate state agencies and the University of California. The Department of Food and Agriculture shall be the lead agency.

(b) An advisory committee shall be appointed by the task force to provide input on issues reviewed by the task force. The advisory committee shall consist of representatives from consumer groups, environmental organizations, farmers, ranchers, representatives from the biotechnology industry, researchers, organic farmers, food processors, retailers, and others with interests in the issues surrounding biotechnology.

(c) The Department of Food and Agriculture shall make funds available to other agencies to accomplish the purposes of this article and shall contract, where appropriate, with the California Council on Science and Technology, the University of California, or other entities to review issues evaluated by the task force or support activities of the advisory committee.

(d) The task force may request particular agencies to lead the effort to evaluate various factors related to food biotechnology. As funding

becomes available, the task force shall evaluate factors including all of the following:

(1) Definition and categorization of food biotechnology and production processes.

(2) Scientific literature on the subject, and a characterization of information resources readily available to consumers.

(3) Issues related to domestic and international marketing of biotechnology foods such as the handling, processing, manufacturing, distribution, labeling, and marketing of these products.

(4) Potential benefits and impacts to human health, the state's economy, and the environment accruing from food biotechnology.

(5) Existing federal and state evaluation and oversight procedures.

(e) The task force shall report issues studied, findings, basis for their findings, and recommendations to the Governor and the Legislature by January 1, 2003.

(f) An initial sum of one hundred twenty-five thousand dollars ($125,000) is hereby appropriated from the General Fund for disbursement to the Department of Food and Agriculture. It is the intent of the Legislature to make further funds available to accomplish the purposes contained in this article.

SEC. 12. Section 705 of the Food and Agricultural Code is amended to read:

705. All state agencies, including, but not limited to, the Department of Finance and the Employment Development Department shall cooperate with the director in the compilation of pertinent statistical data and shall respond to requests by the director for information in a timely manner.

SEC. 13. Section 78486 of the Food and Agricultural Code is amended to read:

78486. One nonvoting member of the council may be appointed by the secretary to represent each of the following entities:

(a) The department.

(b) The Department of Fish and Game.

(c) The California Sea Grant Program.

(d) The State Department of Health Services.

SEC. 14. Section 7076 of the Government Code is amended to read:

7076. (a) (1) The department shall provide technical assistance to the enterprise zones designated pursuant to this chapter with respect to all of the following activities:

(A) Furnish limited onsite assistance to the enterprise zones when appropriate.

(B) Ensure that the locality has developed a method to make residents, businesses, and neighborhood organizations aware of the opportunities to participate in the program.

(C) Help the locality develop a marketing program for the enterprise zone.

(D) Coordinate activities of other state agencies regarding the enterprise zones.

(E) Monitor the progress of the program.

(F) Help businesses to participate in the program.

(2) Notwithstanding existing law, the provision of services in subparagraphs (A) to (F), inclusive, shall be a high priority of the department.

(3) The department may, at its discretion, undertake other activities in providing management and technical assistance for successful implementation of this chapter.

(b) The applicant shall be required to begin implementation of the enterprise zone plan contained in the final application within six months after notification of final designation or the enterprise zone shall lose its designation.

(c) The department may establish, charge, and collect a fee as reimbursement for the costs of its administration of this chapter. The department shall assess each enterprise zone a fee of not more than ten dollars ($10) for each application it accepts for issuance of a certificate pursuant to subdivision (c) of Section 17053.74 of the Revenue and Taxation Code and subdivision (c) of Section 23622.7 of the Revenue and Taxation Code. The enterprise zone administrator may collect this fee at the time it accepts an application for issuance of a certificate. This subdivision shall become inoperative on July 1, 2006, and shall have no force or effect on or after that date.

(d) Any fee assessed and collected pursuant to subdivision (c) shall be refundable if the certificate issued by the local government pursuant to subdivision (c) of Section 17053.74 of the Revenue and Taxation Code and subdivision (c) of Section 23622.7 of the Revenue and Taxation Code is not accepted by the Franchise Tax Board.

SEC. 15. Section 7086 of the Government Code is amended to read:

7086. (a) The department shall design, develop, and make available the applications and the criteria for selection of enterprise zones pursuant to Section 7073, and shall adopt all regulations necessary to carry out this chapter.

(b) The department shall adopt regulations concerning the designation procedures and application process as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare, notwithstanding subdivision (e) of Section 11346.1. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall not remain in

effect more than 120 days unless the department complies with all provisions of Chapter 3.5 as required by subdivision (e) of Section 11346.1.

(c) The Department of General Services, with the cooperation of the Employment Development Department, the Department of Industrial Relations, and the Office of Planning and Research, and under the direction of the State and Consumer Services Agency, shall adopt appropriate rules, regulations, and guidelines to implement Section 7084.

(d) The department shall adopt regulations governing the imposition and collection of fees pursuant to subdivisions (c) and (d) of Section 7076, and the issuance of certificates by local governments pursuant to subdivision (c) of Section 17053.74 of the Revenue and Taxation Code and subdivision (c) of Section 23622.7 of the Revenue and Taxation Code. The regulations shall provide for a notice or invoice to fee payers as to the amount and purpose of the fee. The adoption of the regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall remain in effect for no more that 360 days unless the agency complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 as required by subdivision (e) of Section 11346.1.

SEC. 16. Section 8684 of the Government Code is repealed.

SEC. 17. Section 8684.2 of the Government Code is amended to read:

8684.2. (a) It is the intent of the Legislature:

(1) To provide the Governor with appropriate emergency powers in order to enable utilization of available emergency funding to provide guarantees for interim loans to be made by lending institutions, in connection with relief provided for those persons affected by disasters or a state of emergency in affected areas during periods of disaster relief assistance, for the purpose of supplying interim financing to enable small businesses to continue operations pending receipt of federal disaster assistance.

(2) That the Governor should utilize this authority to prevent business insolvencies and loss of employment in areas affected by these disasters.

(b) In addition to the allocations authorized by Section 8683 and the loan guarantee provisions of Section 14030.1 of the Corporations Code, the Governor may allocate funds made available for the purposes of this chapter, in connection with relief provided, in affected areas during the period of federal disaster relief, to the Small Business Expansion Fund for use by the Office of Small Business, pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of

the Corporations Code, to provide guarantees for low-interest interim loans to be made by lending institutions for the purpose of providing interim financing to enable small businesses that have suffered actual physical damage or significant economic losses, as a result of the disaster or state of emergency for which funding under this section is made available, to continue or resume operations pending receipt of loans made or guaranteed by the federal Small Business Administration. The maximum amount of any loan guarantee funded under this paragraph shall not exceed two hundred thousand dollars ($200,000). Each loan guarantee shall not exceed 95 percent of the loan amount, except that a loan guarantee may be for 100 percent of the loan amount if the applicant can demonstrate that access to business records pertinent to the loan application has been precluded by official action prohibiting necessary reentry into the affected business premises or that those business records pertinent to the loan application have been destroyed. The term of the loan shall be determined by the lending institution providing the loan or shall be made payable on the date the proceeds of a loan made or guaranteed by the federal Small Business Administration with respect to the same damage or loss are made available to the borrower, whichever event first occurs.

(c) Loan guarantees for which the initial 12-month term has expired and for which an application for disaster assistance funding from the federal Small Business Administration is still pending may be extended until the Small Business Administration has reached a final decision on the application. Applications for interim loans shall be processed in an expeditious manner. Wherever possible, lending institutions shall fund nonconstruction loans within 60 calendar days of application. Loan guarantees for loans that have been denied funding by the federal Small Business Administration, may be extended by the financial institution provided that the loan is for no longer than a maximum of seven years, if the business demonstrates the ability to repay the loan with an extended loan term, and a new credit analysis is provided. All loans extended under this provision shall be repaid in installments of principal and interest, and be fully amortized over the term of the loan. Nothing in this section shall preclude the lender from charging reasonable administrative fees in connection with the loan.

(d) Allocations pursuant to this section shall, for purposes of all provisions of law, be deemed to be for extraordinary emergency or disaster response operation costs, as provided in Section 8690.6, incurred by state employees assigned to work on the financial development corporation program.

(e) The Business, Transportation and Housing Agency may adopt regulations to implement the loan guarantee program authorized by this section. The agency may adopt these regulations as emergency

regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3, and for purposes of that chapter, including Section 11349.6, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1, the regulations shall be repealed within 180 days after their effective date unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3, as provided in subdivision (e) of Section 11346.1.

(f) Within 60 days of the conclusion of the period for guaranteeing loans under any small business disaster loan guarantee program conducted for a disaster as authorized by Section 8684.2, or Section 14075 of the Corporations Code, the agency shall provide a report to the Legislature on loan guarantees approved and rejected by gender, ethnic group, type of business and location, and each participating loan institution.

SEC. 18. Section 8899.12 of the Government Code is amended to read:

8899.12. (a) Participants in the EREC shall be selected by the Seismic Safety Commission in collaboration with the California Council on Science and Technology and the Division of Mines and Geology in the Department of Conservation. EREC participants shall include, but not be limited to, representatives from all of the following:

(1) Research universities.

(2) Major professional organizations.

(3) State agencies.

(4) Federal agencies.

(5) Private industry.

(b) The organization and management of the EREC shall be the responsibility of the Seismic Safety Commission, in collaboration with the California Council on Science and Technology and the Division of Mines and Geology.

SEC. 19. Section 8899.16 of the Government Code is repealed.

SEC. 20. Section 8899.21 of the Government Code is repealed.

SEC. 21. Section 11008.2 is added to the Government Code, to read:

11008.2. Any regulation, order, or other action, adopted, prescribed, taken, or performed by the former Technology, Trade, and Commerce Agency as it existed on December 31, 2003, including any office, division, board, or subdivision of the agency or by an official of the agency in the administration of a program or the performance of a duty, responsibility, or authorization transferred to another state department or agency, shall remain in effect and shall be deemed to be a regulation, order, or action of the agency or department to which the responsibility was transferred.

SEC. 22. Section 11008.5 is added to the Government Code, to read:

11008.5. Any program administered in part or whole by the Technology, Trade, and Commerce Agency prior to January 1, 2004, pursuant to an interagency agreement with another state department or agency shall be the responsibility of the other party or parties to that interagency agreement.

SEC. 23. Section 11347.6 of the Government Code is repealed.

SEC. 24. Section 14041 of the Government Code is amended to read:

14041. The Alameda Corridor Transportation Authority is encouraged to coordinate with local private industry councils in service delivery areas to develop training programs and employment opportunities under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.) directly related to the Alameda Corridor project and to pursue other appropriate employment and training funding sources.

SEC. 25. Section 14998.3 of the Government Code is amended to read:

14998.3. (a) The commission shall submit a list of recommended candidates for the position of Director of the Film Commission to the Governor for consideration. The Governor shall appoint the director.

(b) The Director of the Film Commission shall receive a salary to be determined by the Department of Personnel Administration.

(c) The secretary, or his or her designee, shall act as the director during the absence from the state or other temporary absence, disability, or unavailability of the director, or during a vacancy in that position.

SEC. 26. 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, subject to the provision of funding appropriated for these purposes, 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. 27. Section 14998.6 of the Government Code is amended to read:

14998.6. The director of the commission shall provide staff support to the California Film Commission. When needed, the secretary may assign additional staff on a temporary or permanent basis.

SEC. 28. Section 14998.7 of the Government Code is amended to read:

14998.7. Any funds appropriated to, or for use by, the California Film Commission for purposes of this chapter, shall be under the control of the secretary or his or her designee.

SEC. 29. Section 14998.8 of the Government Code is amended to read:

14998.8. (a) The director of the commission shall be the permitting authority for the use of state-owned property and state employee services for the purpose of making commercial motion pictures. The commission may establish fees not to exceed the actual cost of the affected state agency for this purpose. All fees collected pursuant to this section shall be deposited in the Film Transfer Account, which is hereby created in the Special Deposit Fund, for disbursement by the director to reimburse the operating departments for their actual costs.

(b) The director shall assure a ''one-stop'' permit process for applications for permission to use state-owned property for motion pictures. In so doing, applications for permission to use state property for making motion pictures shall be made to the director of the commission who, promptly upon receipt of such an application, shall contact the state agency having jurisdiction over the property specified in the application for the concurrence of the agency in the use of property. The denial of an application may be made on the basis of any of the following:

(1) The use would unduly interfere with the conduct of state business.

(2) Failure of the permittee to provide full insurance or bond coverage, if required by the Department of General Services, or the affected agency, sufficient to reimburse the state for any user-caused

damage to the property and to provide adequate personal liability insurance coverage.

The use of state property shall be denied, if it is determined that the use would violate or be in conflict with existing provisions of statute or regulation by the director of the department, agency, or commission responding to a permit request.

(c) Any state agency having management and control over state property, the use of which is sought by an application, shall permit the property to be used, unless otherwise denied by the provisions of this section.

(d) Nothing in this section requires a state agency to take any action not authorized by law or to make any decision in a manner or by a method not authorized by law or which is prohibited by law.

(e) If in connection with the use of roads, highways, and freeways, the assistance, control, or protection by California Highway Patrol officers is desired, applications to the director to utilize services of California Highway Patrol officers in the production of motion pictures shall be made directly to the Commissioner of the California Highway Patrol. The commissioner may approve the application if employees are available and the agency is fully reimbursed for additional costs incurred. Applications to utilize California Highway Patrol employee services shall be approved or disapproved by the commissioner.

(f) The director, whenever feasible, shall approve or deny any application within 24 hours. In the event that the director of the department or agency having jurisdiction over the property specified in the application permit takes no action to disapprove the application within five working days, the application shall be deemed approved by the director. If the director of the department or agency determines that he or she is unable to concur or deny an application within five working days and so notifies the director within five working days of the application, the director shall then have a total of 10 days from receipt of the application to deny the application. In the event no action is taken by the director within the 10-day period, the application shall be deemed approved by the director.

(g) At least 30 days prior to adoption of state regulations, rules, written guidelines, or policies that would have clear, explicit, and definite implications for the production of motion pictures on state-owned property by a state agency, including any of that agency's district or regional offices, other than for immediate health and safety purposes, the agency shall submit a written copy to the director. The commission shall review the proposal and report its findings to the submitting agency within five working days of receipt of the materials sent. The submitting agency shall consider the commission's findings prior to final adoption of the regulations, rules, written guidelines, or

policies, unless the commission's findings are not made available to the submitting agency within the above prescribed time limits. Any and all findings made by the commission pursuant to this section shall be advisory. The submitting agency shall provide the commission with a final written copy of its adopted regulations, rules, written guidelines, or policies.

SEC. 30. Section 14998.9 of the Government Code is amended to read:

14998.9. The director of the commission shall prepare and implement a program to promote the production of motion pictures and still photography for the benefit of the state's economy.

Subject to the provision of funding appropriated for these purposes, the program shall do, but shall not be limited to doing, all of the following:

(a) Administer a one-stop permit office, pursuant to subdivision (b) of Section 14998.8, which shall issue permits for the use of state property for filmmaking.

(b) Implement the guidelines or regulations for a standardized permit procedure for all state agencies pursuant to guidelines adopted by the commission under Section 14998.4.

(c) Update and expand the location resource library.

(d) Produce and implement a marketing and promotion plan for filmmaking in California which shall be subject to the approval of the commission. The purpose of the plan shall be to design a program for the preparation and distribution of appropriate promotional and informational materials pointing out desirable locations within the state for the production of motion pictures, explaining the benefits and advantages of producing motion pictures within the state government, as well as those services available at the local level and within the industry.

(e) Conduct workshops to assist local governments to adopt uniform permit procedures and to establish film development offices.

(f) Request and obtain any information from state entities necessary to carry out the purposes of this section.

(g) Accept grant moneys for the purpose of implementing this section.

(h) Accept gifts and donations for the purpose of implementing this section.

SEC. 31. Section 15710 of the Government Code is amended to read:

15710. (a) Upon the effective date of the repeal of Chapter 8.5 (commencing with Section 15399.10), all money remaining in the Petroleum Underground Storage Tank Financing Account and all subsequent loan repayments shall revert to the General Fund.

(b) The inoperation and repeal of Chapter 8.5 (commencing with Section 15399.10) shall not terminate the following obligations or authorities necessary to administer the obligations until all of the following obligations are satisfied:

(1) The payment of claims filed prior to the date that Chapter 8.5 (commencing with Section 15399.10) becomes inoperative, against the Underground Storage Tank Cleanup Fund pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code, until the money in the fund is exhausted. Upon exhaustion of the Underground Storage Tank Cleanup Fund, any remaining claims shall be invalid.

(2) The repayment of loans, outstanding as of the date that Chapter 8.5 (commencing with Section 15399.10) becomes inoperative, due and payable to the State Water Resources Control Board under the terms of that former chapter.

(3) The resolution of any cost recovery action filed prior to the date that Chapter 8.5 (commencing with Section 15399.10) becomes inoperative, pursuant to Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code.

SEC. 33. Section 63024 of the Government Code is amended to read:

63024. The executive director may contract with the Department of Finance, the State Department of Health Services, the Department of Transportation, the Department of Water Resources, the California Integrated Waste Management Board, the State Water Resources Control Board, the Governor's Office of Planning and Research, and any other necessary agencies, persons, or firms to enable the agency to properly perform the duties imposed by this division.

SEC. 34. Section 65040.9 of the Government Code is amended to read:

65040.9. (a) On or before January 1, 2004, the Office of Planning and Research shall, if sufficient federal funds become available for this purpose, prepare and publish an advisory planning handbook for use by local officials, planners, and builders that explains how to reduce land use conflicts between the effects of civilian development and military readiness activities carried out on military installations, military operating areas, military training areas, military training routes, and military airspace, and other territory adjacent to those installations and areas.

(b) At a minimum, the advisory planning handbook shall include advice regarding all of the following:

(1) The collection and preparation of data and analysis.

(2) The preparation and adoption of goals, policies, and standards.

(3) The adoption and monitoring of feasible implementation measures.

(4) Methods to resolve conflicts between civilian and military land uses and activities.

(5) Recommendations for cities and counties to provide drafts of general plan and zoning changes that may directly impact military facilities, and opportunities to consult with the military base personnel prior to approving development adjacent to military facilities.

(c) In preparing the advisory planning handbook, the office shall collaborate with the Office of Military Base Retention and Reuse and the Business, Transportation and Housing Agency. The office shall consult with persons and organizations with knowledge and experience in land use issues affecting military installations and activities.

(d) The office may accept and expend any grants and gifts from any source, public or private, for the purposes of this section.

SEC. 35. Section 65040.12 of the Government Code is amended to read:

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

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

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

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

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

(c) When it adopts its next edition of the general plan guidelines pursuant to Section 65040.2, but in no case later than July 1, 2003, the office shall include guidelines for addressing environmental justice matters in city and county general plans. The office shall hold at least one public hearing prior to the release of any draft guidelines, and at least one public hearing after the release of the draft guidelines. The hearings may be held at the regular meetings of the Planning Advisory and Assistance Council.

(d) The guidelines developed by the office pursuant to subdivision (c) shall recommend provisions for general plans to do all of the following:

(1) Propose methods for planning for the equitable distribution of new public facilities and services that increase and enhance community quality of life throughout the community, given the fiscal and legal constraints that restrict the siting of these facilities.

(2) Propose methods for providing for the location, if any, of industrial facilities and uses that, even with the best available technology, will contain or produce material that, because of its quantity, concentration, or physical or chemical characteristics, poses a significant hazard to human health and safety, in a manner that seeks to avoid over-concentrating these uses in proximity to schools or residential dwellings.

(3) Propose methods for providing for the location of new schools and residential dwellings in a manner that seeks to avoid locating these uses in proximity to industrial facilities and uses that will contain or produce material that because of its quantity, concentration, or physical or chemical characteristics, poses a significant hazard to human health and safety.

(4) Propose methods for promoting more livable communities by expanding opportunities for transit-oriented development so that residents minimize traffic and pollution impacts from traveling for purposes of work, shopping, schools, and recreation.

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

SEC. 36. Section 66031 of the Government Code is amended to read:

66031. (a) Notwithstanding any other provision of law, any action brought in the superior court relating to any of the following subjects may be subject to a mediation proceeding conducted pursuant to this chapter:

(1) The approval or denial by a public agency of any development project.

(2) Any act or decision of a public agency made pursuant to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The failure of a public agency to meet the time limits specified in Chapter 4.5 (commencing with Section 65920), commonly known as the Permit Streamlining Act, or in the Subdivision Map Act (Division 2 (commencing with Section 66410)).

(4) Fees determined pursuant to Sections 53080 to 53082, inclusive, or Chapter 4.9 (commencing with Section 65995).

(5) Fees determined pursuant to Chapter 5 (commencing with Section 66000).

(6) The adequacy of a general plan or specific plan adopted pursuant to Chapter 3 (commencing with Section 65100).

(7) The validity of any sphere of influence, urban service area, change of organization or reorganization, or any other decision made pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5).

(8) The adoption or amendment of a redevelopment plan pursuant to the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code).

(9) The validity of any zoning decision made pursuant to Chapter 4 (commencing with Section 65800).

(10) The validity of any decision made pursuant to Article 3.5 (commencing with Section 21670) of Chapter 4 of Part 1 of Division 9 of the Public Utilities Code.

(b) Within five days after the deadline for the respondent or defendant to file its reply to an action, the court may invite the parties to consider resolving their dispute by selecting a mutually acceptable person to serve as a mediator, or an organization or agency to provide a mediator.

(c) In selecting a person to serve as a mediator, or an organization or agency to provide a mediator, the parties shall consider the following:

(1) The council of governments having jurisdiction in the county where the dispute arose.

(2) Any subregional or countywide council of governments in the county where the dispute arose.

(3) Any other person with experience or training in mediation including those with experience in land use issues, or any other organization or agency that can provide a person with experience or training in mediation, including those with experience in land use issues.

(d) If the court invites the parties to consider mediation, the parties shall notify the court within 30 days if they have selected a mutually acceptable person to serve as a mediator. If the parties have not selected a mediator within 30 days, the action shall proceed. The court shall not draw any implication, favorable or otherwise, from the refusal by a party to accept the invitation by the court to consider mediation. Nothing in this section shall preclude the parties from using mediation at any other time while the action is pending.

SEC. 37. Section 66036 of the Government Code is repealed.

SEC. 38. Section 91550 of the Government Code is amended to read:

91550. There is in state government the California Industrial Development Financing Advisory Commission, consisting of five members, as follows:

(a) The Treasurer, who shall serve as chairperson.
(b) The Controller.
(c) The Director of Finance.
(d) The Secretary of Business, Transportation and Housing.
(e) The Commissioner of Corporations.

Members of the commission may each designate a deputy or employee in his or her agency to act for him or her at all meetings of the commission. The first meeting shall be convened by the Treasurer.

SEC. 39. Section 11998.1 of the Health and Safety Code is amended to read:

11998.1. It is the intent of the Legislature that the following long-term five-year goals be achieved:

(a) With regard to education and prevention of drug and alcohol abuse programs, the following goals:

(1) Drug and alcohol abuse education has been included within the mandatory curriculum in kindergarten and grades 1 to 12, inclusive, in every public school in California.

(2) Basic training on how to recognize, and understand what to do about, drug and alcohol abuse has been provided to administrators and all teachers of kindergarten and grades 1 to 12, inclusive.

(3) All school counselors and school nurses have received comprehensive drug and alcohol abuse training.

(4) Each school district with kindergarten and grades 1 to 12, inclusive, has appointed a drug and alcohol abuse advisory team of school administrators, teachers, counselors, students, parents, community representatives, and health care professionals, all of whom have expertise in drug and alcohol abuse prevention. The team coordinates with and receives consultation from the county alcohol and drug program administrators.

(5) Every school board member has received basic drug and alcohol abuse information.

(6) Each school district has a drug and alcohol abuse specialist to assist the individual schools.

(7) Each school in grades 7 to 12, inclusive, has student peer group drug and alcohol abuse programs.

(8) Every school district with kindergarten and grades 1 to 12, inclusive, has updated written drug and alcohol abuse policies and procedures including disciplinary procedures which will be given to every school employee, every student, and every parent.

(9) The California State University and the University of California have evaluated and, if feasible, established educational programs and degrees in the area of drug and alcohol abuse.

(10) Every school district with kindergarten and grades 1 to 12, inclusive, has an established parent teachers group with drug and alcohol abuse prevention goals.

(11) Every school district has instituted a drug and alcohol abuse education program for parents.

(12) Drug and alcohol abuse training has been imposed as a condition for teacher credentialing and license renewal, and knowledge on the issue is measured on the California Basic Education Skills Test.

(13) Drug and alcohol abuse knowledge has been established as a component on standardized competency tests as a requirement for graduation.

(14) Every school district has established a parent support group.

(15) Every school district has instituted policies that address the special needs of children who have been rehabilitated for drug or alcohol abuse problems and who are reentering school. These policies shall consider the loss of schooltime, the loss of academic credits, and the sociological problems associated with drug and alcohol abuse, its rehabilitation, and the educational delay it causes.

(16) The number of drug and alcohol abuse related incidents on school grounds has decreased by 20 percent.

(b) With regard to community programs, the following goals:

(1) Every community-based social service organization that receives state and local financial assistance has drug and alcohol abuse information available for clients.

(2) All neighborhood watch, business watch, and community conflict resolution programs have included drug and alcohol abuse prevention efforts.

(3) All community-based programs that serve schoolaged children have staff trained in drug and alcohol abuse and give a clear, drug- and alcohol-free message.

(c) With regard to drug and alcohol abuse programs of the media, the following goals:

(1) The state has established a comprehensive media campaign that involves all facets of the drug and alcohol abuse problem, including treatment, education, prevention, and intervention that will result in increasing the public's knowledge and awareness of the detrimental effects of alcohol and drug use, reducing the use of alcohol and drugs, and increasing healthy lifestyle choices.

(2) The department on a statewide basis, and the county board of supervisors or its designees at the local level, have:

(A) Assisted the entertainment industry in identifying ways to use the entertainment industry effectively to encourage lifestyles free of substance abuse.

(B) Assisted the manufacturers of drug and alcohol products in identifying ways to use product advertising effectively to discourage substance abuse.

(C) Assisted television stations in identifying ways to use television programming effectively to encourage lifestyles free of substance abuse.

(3) A statewide cooperative fundraising program with recording artists and the entertainment industry has been encouraged to fund drug and alcohol abuse prevention efforts in the state.

(d) With regard to drug and alcohol abuse health care programs, the following goals:

(1) The number of drug and alcohol abuse-related medical emergencies has decreased by 4 percent per year.

(2) All general acute care hospitals and AIDS medical service providers have provided information to their patients on drug and alcohol abuse.

(3) The Medical Board of California, the Psychology Examining Committee, the Board of Registered Nursing, and the Board of Behavioral Science Examiners have developed and implemented the guidelines or regulations requiring drug and alcohol abuse training for their licensees, and have developed methods of providing training for those professionals.

(e) With regard to private sector drug and alcohol abuse programs, the following goals:

(1) A significant percentage of businesses in the private sector have developed personnel policies that discourage drug and alcohol abuse and encourage supervision, training, and employee education.

(2) Noteworthy and publicly recognized figures and private industry have been encouraged to sponsor fundraising events for drug and alcohol abuse prevention.

(3) Every public or private athletic team has been encouraged to establish policies forbidding drug and alcohol abuse.

(4) The private sector has established personnel policies that discourage drug and alcohol abuse but encourage treatment for those employees who require this assistance.

(f) With regard to local government drug and alcohol abuse programs, the following goals:

(1) Every county has a five-year master plan to eliminate drug and alcohol abuse developed jointly by the county-designated alcohol and drug program administrators, reviewed jointly by the advisory boards set forth in paragraph (2), and approved by the board of supervisors. For those counties in which the alcohol and drug programs are jointly administered, the administrator shall develop the five-year master plan. To the degree possible, all existing local plans relating to drug or alcohol abuse shall be incorporated into the master plan.

(2) Every county has an advisory board on alcohol problems and an advisory board on drug programs. The membership of these advisory boards is representative of the county's population and is geographically balanced. To the maximum extent possible the county advisory board on alcohol problems and the county advisory board on drug programs will have representatives of the following:

(A) Law enforcement.

(B) Education.

(C) The treatment and recovery community, including a representative with expertise in AIDS treatment services.

(D) Judiciary.

(E) Students.

(F) Parents.

(G) Private industry.

(H) Other community organizations involved in drug and alcohol services.

(I) A representative of organized labor responsible for the provision of Employee Assistance Program services.

If any of these areas is not represented on the advisory bodies, the administrator designated in paragraph (1) shall solicit input from a representative of the nonrepresented area prior to the development of a master plan pursuant to paragraph (1).

(3) Every county public social service agency has established policies that discourage drug and alcohol abuse and encourage treatment and recovery services when necessary.

(4) Every local unit of government has an employee assistance program that addresses drug and alcohol abuse problems.

(5) Every local unit of government has considered the potential for drug and alcohol abuse problems when developing zoning ordinances and issuing conditional use permits.

(6) Every county master plan includes treatment and recovery services.

(6.5) Every county master plan includes specialized provisions to ensure optimum alcohol and drug abuse service delivery for handicapped and disabled persons.

(7) Every local unit of government has been encouraged to establish an employee assistance program that includes the treatment of drug and alcohol abuse-related programs.

(8) Every local governmental social service provider has established a referral system under which clients with drug and alcohol abuse problems can be referred for treatment.

(9) Every county drug and alcohol abuse treatment or recovery program that serves women gives priority for services to pregnant women.

(10) Every alcohol and drug abuse program provides acquired immune deficiency syndrome (AIDS) information to all program participants.

(g) With regard to state and federal government drug and alcohol abuse programs, the following goals:

(1) The Department of Alcoholic Beverage Control has informed all alcohol retailers of the laws governing liquor sales and has provided training available to all personnel selling alcoholic beverages, on identifying and handling minors attempting to purchase alcohol.

(2) The Office of Emergency Services has required all applicants for crime prevention and juvenile justice and delinquency prevention funds to include drug and alcohol abuse prevention efforts in their programs.

(3) All county applications for direct or indirect drug and alcohol services funding from the department include a prevention component.

(4) The Superintendent of Public Instruction has employed drug and alcohol abuse school prevention specialists and assisted school districts with the implementation of prevention programs.

(5) The State Department of Mental Health has staff trained in drug and alcohol abuse prevention who can assist local mental health programs with prevention efforts.

(6) The Department of the California Highway Patrol, as permitted by the United States Constitution, has established routine statewide sobriety checkpoints for driving while under the influence.

(7) The Department of Corrections and the Department of the Youth Authority have provided drug and alcohol abuse education and prevention services for all inmates, wards, and parolees. Both departments have provided drug and alcohol abuse treatment services for any inmate, ward, or parolee determined to be in need of these services, or who personally requests these services.

(8) The Department of Motor Vehicles has distributed prevention materials with each driver's license or certificate of renewal and each vehicle registration renewal mailed by the Department of Motor Vehicles.

(9) Federal prevention programs have been encouraged to follow the master plan.

(10) State licensing and program regulations for drug and alcohol abuse treatment programs have been consolidated and administered by one state agency.

(11) State treatment funding priorities have been included to specially recognize the multiple diagnosed client who would be eligible for services from more than one state agency.

(12) Every state agency has formalized employee assistance programs that include the treatment of drug and alcohol abuse-related problems.

(13) The state master plan includes specialized provisions to ensure optimum drug and alcohol abuse service delivery for handicapped and disabled persons.

(h) With regard to private sector direct service providers, the following goals:

(1) Drinking drivers programs have provided clear measurements of successful completion of the program to the courts for each court-ordered client.

(2) Sufficient drug and alcohol treatment and recovery services exist throughout the state to meet all clients' immediate and long-range needs.

(3) Each county to the extent possible provides localized alcohol and drug treatment and recovery services designed for individuals seeking assistance for polydrug abuse.

(4) Adequate nonresidential and residential services are available statewide for juveniles in need of alcohol or drug abuse services.

(5) Each provider of alcohol or drug services has been certified by the state.

(6) Drug and alcohol abuse treatment providers provide general acquired immune deficiency syndrome (AIDS) information during treatment.

(i) With regard to supply regulation and reduction in conjunction with drug and alcohol abuse, the following goals:

(1) The California National Guard supports federal, state, and local drug enforcement agencies in counternarcotic operations as permitted by applicable laws and regulations.

(2) Each county has a drug and alcohol abuse enforcement team, designated by the board of supervisors. This team includes all components of the criminal justice system. This team shall be responsible to the board of supervisors, shall coordinate with the drug and alcohol abuse advisory board and the county on all criminal justice matters relating to drug and alcohol abuse, and shall coordinate, and actively participate, with the county alcohol and drug program administrators throughout the development and implementation of the five-year master plan.

(3) The Office of Emergency Services, the Youth and Adult Correctional Agency, the Department of the California Highway Patrol, the Office of Traffic Safety, and the Department of Justice have established a state level drug and alcohol abuse enforcement team that includes representatives from all facets of criminal justice. The lead agency for the enforcement team has been designated by the Governor. This team advises the state and assists the local teams.

(4) The Office of Emergency Services, the Youth and Adult Correctional Agency, and the Department of Justice have, as a priority when determining training subjects, prevention seminars on drug and

alcohol abuse. The Commission on Peace Officer Standards and Training has, as a priority when determining training subjects, drug and alcohol enforcement.

(5) The Department of the California Highway Patrol, as permitted by the United States Constitution, will in conjunction with establishing sobriety checkpoints statewide, assist local law enforcement agencies with the establishment of local programs.

(6) Counties with more than 10 superior court judgeships have established programs under which drug cases receive swift prosecution by well-trained prosecutors before judges who are experienced in the handling of drug cases.

(7) The courts, when determining bail eligibility and the amount of bail for persons suspected of a crime involving a controlled substance, shall consider the quantity of the substance involved when measuring the danger to society if the suspect is released.

(8) Drunk driving jails have been established that provide offender education and treatment during incarceration.

(9) All probation and parole officers have received drug and alcohol abuse training, including particular training on drug recognition.

(10) All parolees and persons on probation with a criminal history that involves drug or alcohol abuse have conditions of parole or probation that prohibit drug and alcohol abuse.

(11) The Judicial Council has provided training on drug and alcohol abuse for the judges.

(12) The courts, when sentencing offenders convicted of selling drugs, consider ''street value'' of the drugs involved in the underlying crime.

(13) Judges have been encouraged to include drug and alcohol abuse treatment and prevention services in sentences for all offenders. Judges are requiring, as a condition of sentencing, drug and alcohol abuse education and treatment services for all persons convicted of driving under the influence of alcohol or drugs.

(14) Juvenile halls and jails provide clients with information on drug and alcohol abuse.

(15) The estimated number of clandestine labs operating in California has decreased by 10 percent per year.

(16) Each local law enforcement agency has developed, with the schools, protocol on responding to school drug and alcohol abuse problems.

(17) Every county has instituted a mandatory driving while under the influence presentence offender evaluation program.

SEC. 40. Section 18949.6 of the Health and Safety Code is amended to read:

18949.6. (a) The commission shall adopt regulations setting forth the procedure for the adoption of building standards and administrative regulations that apply directly to the implementation or enforcement of building standards.

(b) Regulatory adoption shall be accomplished so as to facilitate the triennial adoption of the specified model codes pursuant to Section 18928.

(c) The regulations shall allow for the distribution of proposed building standards and regulatory changes to the public for review in compliance with the requirements of 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) and for the acceptance of responses from the public.

SEC. 41. Section 25395.20 of the Health and Safety Code is amended to read:

25395.20. (a) For purposes of this article, the following definitions shall apply:

(1) ''Account'' means the Cleanup Loans and Environmental Assistance to Neighborhoods Account established pursuant to subdivision (b).

(2) (A) ''Brownfield'' means property that meets all of the following conditions:

(i) It is located in an urban area.

(ii) It was previously the site of an economic activity that is no longer in operation at that location.

(iii) It has been vacant or has had no occupant engaged in year-round economically productive activities for a period of not less than the 12 months previous to the date of application for a loan pursuant to this article.

(B) ''Brownfield'' does not include any of the following:

(i) Property listed, or proposed for listing, on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is a brownfield described in subparagraph (C) of paragraph (6).

(3) ''Cleanup and abatement order'' means an order issued by a regional board pursuant to Section 13304 of the Water Code.

(4) ''Cleanup Loans and Environmental Assistance to Neighborhoods Program'' or ''CLEAN'' means the loan program established by the department pursuant to Section 25395.22, to finance

the performance of actions necessary to respond to the release or threatened release of hazardous material on an eligible property.

(5) ''Economic activity'' means a governmental activity, a commercial, agricultural, industrial, or not-for-profit enterprise, or other economic or business concern.

(6) ''Eligible property'' means a site that is any of the following:

(A) A brownfield.

(B) An underutilized property that is any of the following:

(i) A property described in clause (v) of subparagraph (D) of paragraph (16).

(ii) A property located in an enterprise zone established pursuant to the Enterprise Zone Act (Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code), in a project area for which a redevelopment plan has been approved pursuant to Article 4 (commencing with Section 33300) of Chapter 4 of Part 1 of Division 24, or in an eligible area, as determined pursuant to paragraph (2) of subdivision (c) of Section 7072 of the Government Code.

(iii) A property, the redevelopment of which will result in any of the following:

(I) An increase in the number of full-time jobs that is at least 100 percent greater than the number of jobs provided by the economic activity located on the property before redevelopment occurred.

(II) An increase in property taxes paid to the local government that is at least 100 percent greater than the property taxes paid by the property owner before redevelopment occurred.

(III) Sales tax revenues to the local government that are sufficient to defray the costs of providing municipal services to the property after the redevelopment occurs.

(IV) Housing for very low, low-, or moderate-income households, as defined in paragraph (2) of subdivision (h) of Section 65589.5 of the Government Code.

(V) The construction of new or expanded school facilities, public day care centers, parks, or community recreational facilities.

(C) A brownfield or an underutilized property described in clause (ii) of subparagraph (B) that will be the site of a contiguous expansion of an operating industrial or commercial facility owned or operated by one of the following:

(i) A small business.

(ii) A nonprofit corporation formed under the Nonprofit Public Benefit Corporation Law (Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code) or the Nonprofit Religious Corporation Law (Part 4 (commencing with Section 9110) of Division 2 of Title 1 of the Corporations Code).

(iii) A small business incubator that is undertaking the expansion with the assistance of a grant authorized by Section 15339.3 of the Government Code or a loan guarantee provided pursuant to Section 14090 of the Corporations Code.

(7) ''Eligible property'' does not include any of the following:

(A) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(B) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(C) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property meets the criteria specified in subparagraph (C) of paragraph (6).

(8) (A) ''Hazardous material'' means a substance or waste that, because of its physical, chemical, or other characteristics, may pose a risk of endangering human health or safety or of degrading the environment. ''Hazardous material'' includes, but is not limited to, all of the following:

(i) A hazardous substance, as defined in Section 25281 or 25316, including the substances specified in Section 25317.

(ii) A hazardous waste, as defined in Section 25117.

(iii) A waste, as defined in Section 101075, or as defined in Section 13050 of the Water Code.

(B) ''Hazardous material'' does not include undisturbed naturally occurring hazardous material unless it will adversely affect the reasonable use of a property after response action is completed.

(9) ''Implementation costs,'' for purposes of the expenditure of any funds pursuant to this article, includes, but is not limited to, the costs of overseeing and reviewing preliminary endangerment assessments and response actions that are financed by a loan issued pursuant to this article, including oversight conducted by a regional board pursuant to Section 25395.28.

(10) ''Investigating site contamination program'' means the loan program established by the department pursuant to Section 25395.21 to conduct a preliminary endangerment assessment of a brownfield or an underutilized urban property.

(11) ''Leaking underground fuel tank'' has the same meaning as ''tank,'' as defined in Section 25299.24.

(12) ''No longer in operation'' means an economic activity that is, or previously was, located on a property that is not conducting operations on the property of the type usually associated with the economic activity.

(13) ''Project'' means any response action, and the planned future development, included in an application for a loan pursuant to Section 25395.22.

(14) ''Property'' means real property, as defined in Section 658 of the Civil Code.

(15) ''Small business'' means an independently owned and operated business, that is not dominant in its field of operation, that, together with affiliates, has 100 or fewer employees, and that has average annual gross receipts of ten million dollars ($10,000,000) or less over the previous three years, or a business that is a manufacturer, as defined in Section 14837 of the Government Code, with 100 or fewer employees.

(16) ''Underutilized property'' means property that meets all of the following conditions:

(A) It is located in an urban area.

(B) An economic activity is conducted on the property.

(C) It is the subject of a proposal for development pursuant to this article.

(D) One of the following applies:

(i) The economic activity on the property is irregular or intermittent in nature and uses the property for productive purposes less than four months in any calendar year.

(ii) The economic activity on the property employs less than 25 percent of the property for productive purposes.

(iii) The structures, infrastructure, and other facilities on the property are antiquated, obsolete, or in such poor repair that they cannot be used for the purposes for which they were originally constructed and require replacement in order to implement the redevelopment proposal.

(iv) The economic activity conducted on the property is a parking facility or an activity that offers a similar marginal economic service and the facility or activity will be replaced when the property is redeveloped.

(v) The property is adjacent to one or more brownfields or underutilized properties that are the subject of a project under this article and its inclusion in the project is necessary in order to ensure that the redevelopment of the brownfield or brownfields or underutilized property or underutilized properties occurs.

(E) An underutilized property does not include any of the following:

(i) Property listed or proposed for listing on the National Priorities List pursuant to the federal act (42 U.S.C. Sec. 9605 (a)(8)(B)).

(ii) Property that is, or was, owned or operated by a department, agency, or instrumentality of the United States.

(iii) Property that will be the site of a contiguous expansion or improvement of an operating industrial or commercial facility, unless the property is an underutilized property described in subparagraph (C) of paragraph (6).

(17) ''Regional board'' means a California regional water quality control board.

(18) ''State board'' means the State Water Resources Control Board.

(19) ''Urban area'' means either of the following:

(A) The central portion of a city or a group of contiguous cities with a population of 50,000 or more, together with adjacent densely populated areas having a population density of at least 1,000 persons per square mile.

(B) An urbanized area as defined in paragraph (2) of subdivision (b) of Section 21080.7 of the Public Resources Code.

(b) The Cleanup Loans and Environmental Assistance to Neighborhoods Account is hereby established in the General Fund to provide low-interest loans to qualified applicants for the purpose of funding preliminary endangerment assessments and response actions at brownfields and underutilized properties located in the state pursuant to this article, and for any other purpose determined by the department to stimulate the redevelopment of brownfields and underutilized properties, if the department determines that the redevelopment will result in the overall improvement of the community in which the property is located and will provide a reasonable economic or social benefit, in accordance with subdivision (c). All of the following moneys shall be deposited in the account:

(1) Funds appropriated by the Legislature for the purposes of this article.

(2) Notwithstanding Section 16475 of the Government Code, any interest earned upon money deposited into the account.

(3) Proceeds from loan repayments.

(4) Proceeds from the sale of property pursuant to this article that is the subject of foreclosure or its equivalent, as defined in subdivision (f) of Section 25548.1, and proceeds from the enforcement of any other security interest.

(c) (1) Except as provided in paragraph (2), notwithstanding Section 13340 of the Government Code, the money in the account is continuously appropriated without regard to fiscal years to the department for the purpose of providing loans pursuant to Sections 25395.21 and 25395.22 and for the purpose of providing subsidies for environmental insurance pursuant to Article 8.7 (commencing with Section 25395.40), the California Financial Assurance and Insurance for Redevelopment Program.

(2) The money in the account may be expended by the department, a regional board, the state board, and the agency for the implementation and administration of this article and for implementation and administration of the California Financial Assurance and Insurance for Redevelopment Program (Article 7 (commencing with Section 25395.40)), only upon appropriation by the Legislature in the annual Budget Act or in another measure.

SEC. 42. Section 25395.23 of the Health and Safety Code is amended to read:

25395.23. (a) The department, after consultation with the secretary, the Secretary of Business, Transportation and Housing, and the Director of the Office of Planning and Research, may approve loan applications submitted pursuant to Section 25395.22. The department may approve a loan only for those response actions necessary to address a release or threatened release of a hazardous material at an eligible property.

(b) If the department determines, based on estimates of the number of loan requests that will be submitted in any fiscal year and the amount of loan funds that will be available during that fiscal year, that sufficient funding to meet the demand for loans will not be available, the department shall establish a system for ranking loan applications based on priority scores. Priority scores shall be calculated for each loan application by scoring the project that is the subject of the loan application using scales that measure the factors listed in subdivision (c). The department shall approve loans for a project based on its priority scores.

(c) The system for ranking loan applications pursuant to subdivision (b) shall establish priority scores for projects that are the subjects of the loan applications using scales that measure all of the following factors:

(1) The degree of community support expressed for the project, including, but not limited to, letters of support from local governmental entities, state or local elected officials, community leaders, and the general public.

(2) Financial support for the project provided at the local level, including grants or other subsidies, and funding provided by the issuance of bonds pursuant to the Mello-Roos Community Facilities Act of 1982 (Chapter 2.5 (commencing with Section 53311) of Division 2 of Part 1 of Title 5 of the Government Code) or financing under the Community Redevelopment Law (Part 1 (commencing with Section 33000) of Division 24).

(3) The potential for the project to provide additional protection of the public health and safety.

(4) The potential for the project to enhance strategic community development, including, but not limited to, all of the following:

(A) The creation of new jobs.

(B) Generation of additional tax revenue.

(C) The likelihood that the project will stimulate additional redevelopment in adjacent areas.

(D) The degree to which implementation of the project will improve local property values.

(E) The degree to which implementation of the project will result in the development of new parks.

(F) The extent to which the project may have a beneficial effect on the construction of new schools.

(G) The extent to which the project will result in the construction of affordable inner-city housing.

(H) The potential for the project to have a beneficial impact on existing local and regional infrastructure or projected infrastructure needs, or otherwise promote infill development.

(5) The economic viability of the project, including, but not limited to, an analysis of the current value of the property as compared to its projected value after all necessary response actions have been completed.

(6) The ability of the loan applicant to successfully perform the response action at the site and repay the loan if funding is provided.

(7) The geographic location of the project, taking into consideration the number and amounts of loans approved for projects located in that area, as compared to those approved for other needy areas throughout the state.

(8) The degree of likelihood that the response action would not be completed if a loan pursuant to Section 25395.22 is not made, including whether any necessary response action is already being paid for by a responsible party pursuant to an administrative order, an agreement issued or entered into with a federal, state, or local agency, a judicial order, or a consent decree.

(9) The ability to obtain conventional financing absent a loan under this program.

SEC. 43. Section 25395.41 of the Health and Safety Code is amended to read:

25395.41. (a) The secretary shall solicit proposals for a package of environmental insurance products from insurance companies through a competitive bidding process. The request for proposal prepared by the secretary shall identify the objectives of this article and the specific types and coverage limits of the insurance products desired, including endorsements and exclusions. The request for proposal shall require that the proposal allow a purchaser the opportunity to pay for additional coverage without losing the lower transaction costs structure of the prenegotiated policy. The secretary shall hold at least one public workshop in both the northern and the southern part of the state to present and solicit comments on the request for proposal prior to receiving any proposals.

(b) (1) The secretary shall evaluate the extent to which each proposal submitted pursuant to subdivision (a) meets the objectives of the request for proposal and shall also evaluate each proposal and interested party using all of the following factors:

(A) Product pricing.

(B) Claims history.

(C) Underwriting history.

(D) Company financial strength and size.

(E) Scope of policy coverages, including endorsements and exclusions.

(F) Marketing and distribution of the insurance products.

(G) Any other factor that the secretary determines will affect the ability of the selected insurance company to meet the requirements of this article and provide the environmental insurance products in the most effective and efficient manner and at the least cost to the state and to persons seeking that insurance.

(2) The secretary shall select one or more insurance companies that have submitted a proposal pursuant to subdivision (a) to be the exclusive state-designated provider of environmental insurance under this article for a period of three years from the date of selection. The secretary shall select a company that, in his or her determination, has submitted a proposal that best meets the requirements of this article and the objectives stated in the request for proposal at the best possible price. Every three years, the secretary shall repeat the competitive bidding process specified in this section.

(c) An insurance company selected to provide prenegotiated environmental insurance products pursuant to subdivision (b) shall offer this prenegotiated package of insurance products to any interested recipient of a loan under the CLEAN Program. The insurance company shall also offer the environmental insurance products made available under this article to any other person who conducts a response action in the state.

(d) The secretary shall implement this section in consultation with representatives of other appropriate state agencies, including the Business, Transportation and Housing Agency, the Office of Planning and Research, the Pollution Control Financing Authority, the Department of Insurance, the state board, the department, and with other interested parties, including developers, lenders, insurers, and representatives from environmental organizations. The secretary shall implement this section in a manner that is consistent with the requirements for state procurement of services set forth in Article 4 (commencing with Section 10335) of Chapter 2 of Part 2 of Division 2 of the Public Contract Code.

SEC. 44. Section 34053 of the Health and Safety Code is amended to read:

34053. For the purpose of providing disaster relief to farmworkers in communities subject to a natural disaster, the department shall give priority to awarding grants in communities participating in the Special

Housing Program for Migratory Workers (Chapter 8.5 (commencing with Section 50710) of Part 2 of Division 33).

SEC. 45. Section 37981 of the Health and Safety Code is amended to read:

37981. The Legislature finds and declares as follows:

(a) For over half a century, California's industries, universities, businesses, and workers have contributed to our nation's defense, utilizing their capital, talents, and skills to develop and bring to production important new technologies and advanced weapons systems, aircraft, and missiles.

(b) Defense spending in California peaked at sixty billion dollars ($60,000,000,000) in 1988. Since then, it has decreased by 16 percent with the resulting loss of 126,000 jobs. The Commission on State Finance projected a further 22 percent reduction to thirty-seven billion dollars ($37,000,000,000) in 1997, with a loss of another 81,000 jobs. California is expected to experience the most severe impact of defense cuts since 1994.

(c) California has experienced four rounds of base closures resulting in the closure or realignment of 29 bases since 1988. Additional bases may be considered for closure in future closure rounds.

(d) California lost more federal payroll jobs from its 29 military base closures under rounds one to four, inclusive, than all of the rest of the states put together. The reduced military payroll, including military and civilian employees, in California is approximately 101,000 jobs. About 300,000 private sector defense industry jobs in California have been lost.

(e) California needs a focused, coordinated defense retention and conversion program within the state in order to protect the existing defense installations and facilities within the state and to assist those communities that have experienced an installation's closing.

(f) Currently, there are over 300,000 active duty and civilian defense personnel in California.

(g) The direct Department of Defense expenditures in California are over thirty billion dollars ($30,000,000,000) for employees, contracts, and capital investment.

(h) California has over 36 major and 25 minor active military installations.

(i) The Department of Defense pays ten million dollars ($10,000,000) annually in fees, permits, and licenses within the state.

(j) Having been the leader in the nation's defense effort, the state must now also assume the role as leader in defending existing military installations within its borders. That role will require a coordinated effort to ensure that California promotes the necessity of existing defense facilities, assist local governments and organizations in planning

retention efforts, and design and implement a single unified plan for active defense retention efforts on the federal level.

(k) It is the intent of the Legislature that the state's role in defense retention, conversion, and military base reuse be consolidated in the Business, Transportation and Housing Agency.

SEC. 46. Section 37982 of the Health and Safety Code is amended to read:

37982. The Legislature recognizes the potential for federal legislation to close additional military installations nationwide. In an effort to be proactive in retaining these facilities within California that are necessary for the defense of the nation and to provide for a single, focused defense of these installations, the California Defense Retention and Conversion Council is hereby created in the Business, Transportation and Housing Agency.

SEC. 47. Section 37983 of the Health and Safety Code is amended to read:

37983. The California Defense Retention and Conversion Council shall consist of the following members, who shall be appointed as follows:

(a) The Governor shall have 11 appointees, who may include, but are not limited to, the following:

(1) The Secretary of Business, Transportation and Housing, or his or her designee.

(2) The Secretary of Environmental Protection, or his or her designee.

(3) The Director of Employment Development, or his or her designee.

(4) The Director of Planning and Research, or his or her designee.

(5) The Director of the Energy Resources, Conservation and Development Commission, or his or her designee.

(6) The Director of Transportation, or his or her designee.

(7) The Director of the Employment Training Panel, or his or her designee.

(8) The Secretary of Resources, or his or her designee.

(9) A member who is an elected public official from local government representing a community with an active defense installation.

(10) A member who is an elected public official from local government representing a community with a closed defense installation.

(11) A public member selected at large.

(b) The Speaker of the Assembly shall have two appointees who may include, but are not limited to, members representing labor, business, or local government.

(c) The Senate Committee on Rules shall have two appointees who may include, but are not limited to, members representing labor, business, or local government.

(d) Nonvoting members, to consist of all of the following:

(1) At his or her option, the President of the University of California, or his or her designee.

(2) The Chancellor of the California State University, or his or her designee.

(3) The Chancellor of the California Community Colleges, or his or her designee.

(4) The Speaker of the Assembly, or his or her designee.

(5) The President pro Tempore of the Senate, or his or her designee.

(6) At the request of the Governor, a flag officer, or his or her designee, from each branch of the United States Armed Forces representing a mission or installation in California to serve as a liaison to the council.

SEC. 48. Section 37984 of the Health and Safety Code is amended to read:

37984. (a) The Secretary of Business, Transportation and Housing shall serve as chairperson of the council.

(b) The Office of Military Base Retention shall provide staff support to the council.

(c) It shall be the purpose of the council to provide a central clearinghouse for all defense retention, conversion, and base reuse activities in the state.

SEC. 49. Section 35989 of the Health and Safety Code is amended and renumbered to read:

37989. The Business, Transportation and Housing Agency with input and assistance from the council, shall establish a Defense Retention Grant Program to grant funds to communities with military bases to assist them in developing a retention strategy. The agency may use grant criteria similar to those for existing defense conversion grant programs as a basis for developing the new grant program. To discourage multiple grant applications for individual defense installations in a region, the criteria shall be drafted to encourage a single application for grant funds to develop, where appropriate, a single, regional defense retention strategy. The structure, requirements, administration, and funding procedures of the grant program shall be submitted to the Legislature for review at least 90 days prior to making the first grant disbursement. The agency may make no grant award without the local community providing at least 50 percent or more in matching funds or in-kind services.

SEC. 50. Section 35990 of the Health and Safety Code is amended and renumbered to read:

37990. The Business, Transportation and Housing Agency shall adopt regulations to implement the programs authorized in this chapter. The agency shall adopt these regulations as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and for purposes of that chapter, including Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare. Notwithstanding subdivision (e) of Section 11346.1 of the Government Code, the regulations shall be repealed within 180 days after their effective date, unless the agency complies with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code as provided in subdivision (e) of Section 11346.1 of the Government Code.

SEC. 51. Section 39752 of the Health and Safety Code is amended to read:

39752. The state board shall provide cost-sharing grants for the development of demonstration projects for new rice straw technologies according to criteria developed by the state board, in consultation with the University of California and the Department of Food and Agriculture, and adopted at a noticed public hearing held by the state board. The criteria shall include, but shall not be limited to, all of the following:

(a) Proposed projects shall use a technology that could use significant volumes of rice straw annually if it is commercialized, based upon various factors, including potential markets and viability of the technology in meeting market demands.

(b) The state board shall provide a grant of not more than 50 percent of the cost for each demonstration project.

(c) Public and private support shall be demonstrated for proposed projects, including local community support from the rice growing community where the project would be located.

(d) The grants shall be authorized and allocated during the 2000–01, 2001–02, and 2002–03 fiscal years. Grants may be expended, under the grant agreement, during a period not to exceed three years from the date that the grant is awarded.

(e) Preference shall be given to projects located within the rice growing regions of the Sacramento Valley and which may be replicated throughout the region.

(f) Projects should demonstrate all of the following:

(1) Technical and economic feasibility.

(2) The capability to become profitable within five years.

(3) Cost-effectiveness.

(4) The extent to which the program mitigates or avoids adverse environmental impacts.

(g) This section shall not become operative until moneys are appropriated for deposit in the Rice Straw Demonstration Project Grant Fund, created pursuant to Section 39751, by the Legislature, or until moneys are transferred to that fund by any other entity.

SEC. 52. Section 40448.6 of the Health and Safety Code is amended to read:

40448.6. The Legislature hereby finds and declares all of the following:

(a) It is necessary to increase the availability of financial assistance to small businesses that are subject to the rules and regulations of the south coast district, in order to minimize economic dislocation and adverse socioeconomic impacts.

(b) It is in the public interest that a portion of the funds collected by the south coast district from violators of air pollution regulations be allocated for the purpose of guaranteeing or otherwise reducing the financial risks of providing financial assistance to small businesses which face increased borrowing requirements in order to comply with air pollution control requirements.

(c) Public agencies and private lenders have a variety of methods available for providing financing assistance to small businesses and other employers, including taxable bonds, composite or pooled financing instruments, loan guarantees, and credit insurance, which could be utilized in combination with the penalties collected by the south coast district to expand the availability and reduce the cost of financing assistance.

(d) The California Pollution Control Financing Authority has funds set aside from previous bond issues, which could be used to guarantee the issuance of bonds or other financing for small businesses for the purchase and installation of pollution control equipment.

(e) The Business, Transportation and Housing Agency, through the small business financial development corporations established pursuant to Chapter 1 (commencing with Section 14000) of Part 5 of Division 3 of Title 1 of the Corporations Code, has the ability to provide state loan guarantees and technical assistance to small businesses needing financial assistance.

(f) The Job Training Partnership Division of the Employment Development Department makes funds available for job training programs, including funds for dislocated workers, through the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.).

(g) It is the policy of the state that the Job Training Partnership Division of the Employment Development Department, in cooperation with the districts and the state board, are encouraged to provide job

training programs for workers who, as determined by the department or the local private industry council, have been laid off or dislocated as a result of actions resulting from air quality regulations.

(h) It is the policy of the state that the California Pollution Control Financing Authority and other state agencies implementing small business assistance programs, in cooperation with the districts and the state board, are encouraged to provide technical and financial assistance to small businesses to facilitate compliance with air quality regulations.

SEC. 53. Section 41503.6 of the Health and Safety Code is amended to read:

41503.6. (a) The Legislature finds and declares that the California Pollution Control Financing Authority, working with the south coast district, has established successful programs to assist small businesses in complying with district rules and financing the purchase of pollution control equipment.

(b) The Treasurer and the California Pollution Control Financing Authority shall work with, and provide all feasible assistance to, districts to increase opportunities for small businesses to comply with the rules and regulations of the district. That assistance may include loans, loan guarantees, and other forms of financial assistance.

SEC. 54. Section 41865 of the Health and Safety Code is amended to read:

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

(b) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(n) On or before September 1, 1999, the state board and the department shall jointly report to the Legislature on the progress of the phasedown of, and the identification and implementation of alternatives to, rice straw burning. This report shall include an economic and environmental assessment, the status of feasible and cost-effective alternatives to rice straw burning, recommendations from the advisory committee on the development of alternatives to rice straw burning, the status of the implementation plan and the schedule required by subdivision (m), progress toward achieving the 50 percent diversion

goal, any recommended changes to this section, and other issues related to this section. The report shall be updated biennially and transmitted to the Legislature not later than September 1 of each odd-numbered year. The state board may adjust the district burn permit fees specified in subdivision (s) to pay for the preparation of the report and its updates. The districts shall collect and remit the adjustment to the state board, which shall deposit the fees in the Motor Vehicle Account in the State Transportation Fund. It shall be the goal of the state board and the department that the cost of the report and its updates shall not exceed fifty thousand dollars ($50,000).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 55. Section 50887.5 of the Health and Safety Code is amended to read:

50887.5. The department is encouraged, as appropriate, to enter into interagency agreements with any state department or agency to ensure close coordination and cooperation in using the funds of the other departments or agencies for the jobs component, child care component, or other components of the housing developments.

SEC. 56. Section 124850 of the Health and Safety Code is amended to read:

124850. The department shall provide expert technical assistance to strategically located, high-risk rural hospitals to assist the hospitals in carrying out an assessment of potential business and diversification of service opportunities. In providing the technical assistance on business

opportunities, the department shall consult with other appropriate agencies. The high-risk rural hospital, in cooperation with the department, may develop a short-term plan of action if, in its opinion, the results of the assessment so indicate. The department, in consultation with an organization of interest, shall do all of the following:

(a) Establish a process for identifying strategically located, high-risk rural hospitals and reviewing requests from the hospitals for assistance.

(b) Develop a standard format for the strategic assessment.

(c) Develop a model action plan.

(d) Establish criteria for review of action plans.

(e) Request input and assistance from organizations of interest.

(f) Make the strategic assessment format and model action plan available to all small and rural hospitals.

SEC. 57. Section 1831 of the Military and Veterans Code is amended to read:

1831. (a) So that the people of California will not forget the sacrifices of those members of the United States Armed Forces who, after the termination of hostilities, remain prisoners of war or are missing in action, as well as the sacrifices of missing United States nonmilitary personnel and civilians, the Governor shall annually proclaim the third Friday of September to be known as Prisoner-of-War/Missing-in-Action (POW/MIA) Recognition Day.

(b) The flag of the National League of POW/MIA Families (POW/MIA Flag) is a black and white banner symbolizing those members of the United States Armed Forces who are listed as prisoners of war or missing in action. The flag serves as a powerful reminder to people everywhere of our country's firm resolve to achieve the fullest possible accounting for every member of the United States Armed Forces, and United States nonmilitary personnel and civilians. To the extent it is structurally feasible, the flag shall be flown during business hours, at locations where the United States flag and the California state flag currently fly, over all of the following places on the dates specified in subdivision (c):

(1) All California National Guard armories.

(2) Department of Veterans Affairs.

(3) Military Department.

(4) State Capitol.

(5) All of the headquarters of the following agencies in Sacramento:

(A) Business, Transportation and Housing Agency.

(B) California Environmental Protection Agency.

(C) California Health and Human Services Agency.

(D) Office of Child Development and Education.

(E) Resources Agency.

(F) State and Consumer Services Agency.

(G) Youth and Adult Correctional Agency.

(c) (1) For the purpose of subdivision (b), the POW/MIA Flag shall be flown on the following dates:

(A) Armed Forces Day, the third Saturday in May.

(B) Memorial Day, the last Monday in May.

(C) Flag Day, June 14.

(D) Independence Day, July 4.

(E) National POW/MIA Recognition Day, the third Friday in September.

(F) Veterans Day, November 11.

(2) If June 14, July 4, or November 11 falls upon a Saturday, the flag shall be flown on the preceding Friday. If any of those dates fall upon a Sunday, the flag shall be flown on the following Monday.

(d) The flag shall be flown at the Vietnam Veterans Memorial located on the grounds of the State Capitol whenever the United States flag is flown at that location.

(e) Additionally, the Governor and the Legislature are authorized and requested to issue proclamations calling upon the people, schools, and local governments of California to recognize POW/MIA Recognition Day with appropriate ceremonies and activities.

SEC. 58. Section 2802 of the Penal Code is amended to read:

2802. The authority shall be under the policy direction of a board of directors, to be known as the Prison Industry Board, and to be referred to hereafter as the board. The board shall consist of 11 members:

(a) The Director of Corrections shall be a member.

(b) The Director of the Department of General Services, or his or her designee, shall be a member.

(c) The Secretary of Business, Transportation and Housing, or his or her designee, shall be a member.

(d) The Speaker of the Assembly shall appoint two members to represent the general public.

(e) The Senate Committee on Rules shall appoint two members to represent the general public.

(f) The Governor shall appoint four members. Of these, two shall be representatives of organized labor, and two shall be representatives of industry. The initial term of one of the members appointed by the Speaker of the Assembly shall be two years, and the initial term of the other shall be three years. The initial term of one of the members appointed by the Senate Committee on Rules shall be two years, and the initial term of the other shall be three years. The initial terms of the four members appointed by the Governor shall be four years. All subsequent terms of all members shall be for four years. Each member's term shall continue until the appointment and qualification of his or her successor.

SEC. 59. Section 25696 of the Public Resources Code is amended to read:

25696. The commission may assist California-based energy technology and energy conservation firms to export their technologies, products, and services to international markets.

The commission may do all of the following:

(a) Conduct a technical assistance program to help California energy companies improve export opportunities and enhance foreign buyers' awareness of and access to energy technologies and services offered by California-based companies. Technical assistance activities may include, but are not limited to, an energy technology export information clearinghouse, a referral service, a trade lead service consulting services for financing, market evaluation, and legal counseling, and information seminars.

(b) Perform research studies and solicit technical advice to identify international market opportunities.

(c) Assist California energy companies to evaluate project or site-specific energy needs of international markets.

(d) Assist California energy companies to identify and address international trade barriers restricting energy technology exports, including unfair trade practices and discriminatory trade laws.

(e) Develop promotional materials in conjunction with California energy companies to expand energy technology exports.

(f) Establish technical exchange programs to increase foreign buyers' awareness of suitable energy technology uses.

(g) Prepare equipment performance information to enhance potential export opportunities.

(h) Coordinate activities with state, federal, and international donor agencies to take advantage of trade promotion and financial assistance efforts offered.

SEC. 60. Section 31306 of the Public Resources Code is amended to read:

31306. (a) The conservancy shall propose capital projects and capital programs, generated by the conservancy, local public agencies, or state agencies for grants available under Section 306A of the federal Coastal Zone Management Improvement Act (Public Law 96-464). The commission shall not forward any application unless it has been proposed by the conservancy.

(b) Nothing in this chapter shall diminish the commission's authority pursuant to Section 30330 of the Public Resources Code, which shall include determination of the allocation of federal financial assistance among the coastal management activities, coastal research activities, coastal energy impact activities, living marine resource activities, and natural resources enhancement and management activities, eligible for

federal financial assistance under the Coastal Zone Management Improvement Act, or any amendment thereto, or any other federal act enacted up to this time or in the future, that relates to the planning and management of the coastal zone, except as provided in this section.

(c) (1) Prior to the commission's determination of allocations under subdivision (b), the commission and the conservancy shall concur on the allocation for capital projects and capital programs generated by the conservancy, local public agencies, or state agencies for public access, agricultural preservation, enhancement of coastal resources, coastal restoration, urban waterfront restoration, reservation of significant coastal resource areas, and commercial fishing facilities. No allocation for these capital projects and capital programs shall be made unless they are proposed by the conservancy.

(2) Prior to the commission's determination of allocations under subdivision (b), the commission and the San Francisco Bay Conservation and Development Commission shall concur on the allocation for the San Francisco Bay Conservation and Development Commission to carry out its responsibilities under the federally approved California Coastal Management Program.

(3) In determining the allocations under subdivision (b), the commission shall consult with the conservancy, the San Francisco Bay Conservation and Development Commission, and the Department of Finance, and shall ensure that agencies eligible for federal financial assistance under the Coastal Zone Management Improvement Act are allocated sufficient assistance to carry out their required responsibilities under the federally approved California Coastal Management Program.

SEC. 61. Section 36300 of the Public Resources Code is amended to read:

36300. The Ocean Resources Task Force is hereby created in state government. The task force is composed of the following or their designee: the Secretary of Environmental Affairs, the Secretary of the Resources Agency, the State Director of Health Services, the Secretary of the Business, Transportation and Housing Agency, the Chairperson or Executive Officer of the State Lands Commission as determined by the commission, the Chairperson or Executive Director of the California Coastal Commission as determined by the commission, the Chairperson or Executive Officer of the Coastal Conservancy as determined by the conservancy, the Chairperson or Executive Director of the San Francisco Bay Conservation and Development Commission as determined by the commission, the Director of Conservation, the Director of Fish and Game, the Director of Boating and Waterways, the Director of Parks and Recreation, the Chairperson of the Mining and Geology Board, the Chairperson or Executive Director of the State Water Resources Control Board as determined by the board, the Executive Officer of each

California regional water quality control board for a coastal region, the Director of Finance, the Chairperson or Executive Director of the State Energy Resources Conservation and Development Commission as determined by the commission, the Chairperson of the State Air Resources Board, the Chairperson of the Senate Committee on Natural Resources and Wildlife, the Chairperson of the Assembly Natural Resources Committee, the President of the University of California, the Chancellor of the California State University, and the Director of the California Sea Grant program.

SEC. 62. Section 42021 of the Public Resources Code is amended to read:

42021. Nothing in this chapter prohibits an applicant from seeking designation of an enterprise zone and receiving economic incentives as defined in Section 7073 of the Government Code.

SEC. 63. Section 42022 of the Public Resources Code is repealed.

SEC. 64. Section 42024 of the Public Resources Code is amended to read:

42024. The board, the Treasurer, and other appropriate state agencies shall, to the extent feasible and as appropriate, coordinate activities that will leverage financing for market development projects and encourage joint activities to strengthen markets for recycled materials.

SEC. 65. Section 883 of the Public Utilities Code is amended to read:

883. (a) The commission shall, on or before February 1, 2001, issue an order initiating an investigation and opening a proceeding to examine the current and future definitions of universal service. That proceeding shall include public hearings that encourage participation by a broad and diverse range of interests from all areas of the state, including, but not limited to, all of the following:

(1) Consumer groups.

(2) Communication service providers, including all providers of high-speed access services.

(3) Facilities-based telephone providers.

(4) Information service providers and Internet access providers.

(5) Rural and urban users.

(6) Public interest groups.

(7) Representatives of small and large businesses and industry.

(8) Local agencies.

(9) State agencies, including, but not limited to, all of the following:

(A) The Business, Transportation and Housing Agency.

(B) The State and Consumer Services Agency.

(C) The State Department of Education.

(D) The State Department of Health Services.

(E) The California State Library.

(10) Colleges and universities.

(b) The objectives of the proceeding set forth in subdivision (a) shall include all of the following:

(1) To investigate the feasibility of redefining universal service in light of current trends toward accelerated convergence of voice, video, and data, with an emphasis on the role of basic telecommunications and Internet services in the workplace, in education and workforce training, access to health care, and increased public safety.

(2) To evaluate the extent to which technological changes have reduced the relevance of existing regulatory regimes given their current segmentation based upon technology.

(3) To receive broad-based input from a cross section of interested parties and make recommendations on whether video, data, and Internet service providers should be incorporated into an enhanced Universal Lifeline Service program, as specified, including relevant policy recommendations regarding regulatory and statutory changes and funding options that are consistent with the principles set forth in subdivision (c) of Section 871.7.

(4) To reevaluate prior definitions of basic service in a manner that will, to the extent feasible, effectively incorporate the latest technologies to provide all California residents with all of the following:

(A) Improved quality of life.

(B) Expanded access to public and private resources for education, training, and commerce.

(C) Increased access to public resources enhancing public health and safety.

(D) Assistance in bridging the ''digital divide'' through expanded access to new technologies by low income, disabled, or otherwise disadvantaged Californians.

(5) To assess projected costs of providing enhanced universal lifeline service in accordance with the intent of this article, and to delineate the subsidy support needed to maintain the redefined scope of universal service in a competitive market.

(6) To design and recommend an equitable and broad-based subsidy support mechanism for universal service in competitive markets in a manner that conforms with subdivision (c) of Section 871.7.

(7) To develop a process to periodically review and revise the definition of universal service to reflect new technologies and markets consistent with subdivision (c) of Section 871.7.

(8) To consider whether similar regulatory treatment for the provision of similar services is appropriate and feasible.

(c) In conducting its investigation, the commission shall take into account the role played by a number of diverse but convergent industries

and providers, even though many of these entities are not subject to economic regulation by the commission or any other government entity.

(d) The recommendations of the commission shall be consistent with state policies for telecommunications as set forth in Section 709, and with all of the following principles:

(1) Universal service shall, to the extent feasible, be provided at affordable prices regardless of linguistic, cultural, ethnic, physical, financial, and geographic considerations.

(2) Consumers shall be provided access to all information needed to allow timely and informed choices about telecommunications products and services that are part of the universal service program and how best to use them.

(3) Education, health care, community, and government institutions shall be positioned as early recipients of new and emerging technologies so as to maximize the economic and social benefits of these services.

(e) The commission shall complete its investigation and report to the Legislature its findings and recommendations on or before January 1, 2002.

SEC. 66. Section 17053.74 of the Revenue and Taxation Code is amended to read:

17053.74. (a) There shall be allowed a credit against the ''net tax'' (as defined in Section 17039) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, ''qualified wages'' means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) ''Minimum wage'' means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) ''Zone expiration date'' means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) ''Qualified employee'' means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area, as defined in Section 7072 of the Government Code.

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 17053.8 or the program area hiring credit under former Section 17053.11.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) ''Taxpayer'' means a person or entity engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of the Government Code.

(6) ''Seasonal employment'' means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) The taxpayer shall do both of the following:

(1) Obtain from the Employment Development Department, as permitted by federal law, the local county or city Job Training Partnership Act administrative entity, the local county GAIN office or social services agency, or the local government administering the enterprise zone, a certification which provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development

Department shall develop a form for this purpose. The Department of Housing and Community Development shall develop regulations governing the issuance of certificates by local governments pursuant to subdivision (a) of Section 7086 of the Government Code.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of trades or businesses, which are not incorporated, that are under common control shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) Principles that apply in the case of controlled groups of corporations, as specified in subdivision (d) of Section 23622.7, shall apply with respect to determining employment.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment (whether or not consecutive) or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, shall be increased by an amount

equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed before the close of that period and the taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) In the case of an estate or trust, both of the following apply:

(1) The qualified wages for any taxable year shall be apportioned between the estate or trust and the beneficiaries on the basis of the income of the estate or trust allocable to each.

(2) Any beneficiary to whom any qualified wages have been apportioned under paragraph (1) shall be treated, for purposes of this part, as the employer with respect to those wages.

(g) For purposes of this section, ''enterprise zone'' means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 17053.10, 17053.17 and 17053.46 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the ''net tax'' for the taxable year, that portion of the credit that exceeds the ''net tax'' may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 17053.70, including any credit carryover from prior years, that may reduce the ''net tax'' for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the enterprise zone. For that purpose, the taxpayer's business income attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11. That business income

shall be further apportioned to the enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17 of Part 11, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the enterprise zone by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the enterprise zone during the taxable year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the taxable year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise zone during the taxable year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the taxable year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the ''net tax'' for the taxable year, as provided in subdivision (i).

(k) The changes made to this section by the act adding this subdivision shall apply to taxable years beginning on or after January 1, 1997.

SEC. 67. Section 23622.7 of the Revenue and Taxation Code is amended to read:

23622.7. (a) There shall be allowed a credit against the ''tax'' (as defined by Section 23036) to a taxpayer who employs a qualified employee in an enterprise zone during the taxable year. The credit shall be equal to the sum of each of the following:

(1) Fifty percent of qualified wages in the first year of employment.

(2) Forty percent of qualified wages in the second year of employment.

(3) Thirty percent of qualified wages in the third year of employment.

(4) Twenty percent of qualified wages in the fourth year of employment.

(5) Ten percent of qualified wages in the fifth year of employment.

(b) For purposes of this section:

(1) ''Qualified wages'' means:

(A) (i) Except as provided in clause (ii), that portion of wages paid or incurred by the taxpayer during the taxable year to qualified employees that does not exceed 150 percent of the minimum wage.

(ii) For up to 1,350 qualified employees who are employed by the taxpayer in the Long Beach Enterprise Zone in aircraft manufacturing activities described in Codes 3721 to 3728, inclusive, and Code 3812 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, ''qualified wages'' means that portion of hourly wages that does not exceed 202 percent of the minimum wage.

(B) Wages received during the 60-month period beginning with the first day the employee commences employment with the taxpayer. Reemployment in connection with any increase, including a regularly occurring seasonal increase, in the trade or business operations of the taxpayer does not constitute commencement of employment for purposes of this section.

(C) Qualified wages do not include any wages paid or incurred by the taxpayer on or after the zone expiration date. However, wages paid or incurred with respect to qualified employees who are employed by the taxpayer within the enterprise zone within the 60-month period prior to the zone expiration date shall continue to qualify for the credit under this section after the zone expiration date, in accordance with all provisions of this section applied as if the enterprise zone designation were still in existence and binding.

(2) ''Minimum wage'' means the wage established by the Industrial Welfare Commission as provided for in Chapter 1 (commencing with Section 1171) of Part 4 of Division 2 of the Labor Code.

(3) ''Zone expiration date'' means the date the enterprise zone designation expires, is no longer binding, or becomes inoperative.

(4) (A) ''Qualified employee'' means an individual who meets all of the following requirements:

(i) At least 90 percent of whose services for the taxpayer during the taxable year are directly related to the conduct of the taxpayer's trade or business located in an enterprise zone.

(ii) Performs at least 50 percent of his or her services for the taxpayer during the taxable year in an enterprise zone.

(iii) Is hired by the taxpayer after the date of original designation of the area in which services were performed as an enterprise zone.

(iv) Is any of the following:

(I) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for services under the federal Job Training Partnership Act (29 U.S.C. Sec. 1501 et seq.), or its successor, who is receiving, or is eligible to receive, subsidized employment, training, or services funded by the federal Job Training Partnership Act, or its successor.

(II) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible to be a voluntary

or mandatory registrant under the Greater Avenues for Independence Act of 1985 (GAIN) provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, or its successor.

(III) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an economically disadvantaged individual 14 years of age or older.

(IV) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a dislocated worker who meets any of the following:

(aa) Has been terminated or laid off or who has received a notice of termination or layoff from employment, is eligible for or has exhausted entitlement to unemployment insurance benefits, and is unlikely to return to his or her previous industry or occupation.

(bb) Has been terminated or has received a notice of termination of employment as a result of any permanent closure or any substantial layoff at a plant, facility, or enterprise, including an individual who has not received written notification but whose employer has made a public announcement of the closure or layoff.

(cc) Is long-term unemployed and has limited opportunities for employment or reemployment in the same or a similar occupation in the area in which the individual resides, including an individual 55 years of age or older who may have substantial barriers to employment by reason of age.

(dd) Was self-employed (including farmers and ranchers) and is unemployed as a result of general economic conditions in the community in which he or she resides or because of natural disasters.

(ee) Was a civilian employee of the Department of Defense employed at a military installation being closed or realigned under the Defense Base Closure and Realignment Act of 1990.

(ff) Was an active member of the armed forces or National Guard as of September 30, 1990, and was either involuntarily separated or separated pursuant to a special benefits program.

(gg) Is a seasonal or migrant worker who experiences chronic seasonal unemployment and underemployment in the agriculture industry, aggravated by continual advancements in technology and mechanization.

(hh) Has been terminated or laid off, or has received a notice of termination or layoff, as a consequence of compliance with the Clean Air Act.

(V) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a disabled individual who is eligible for or enrolled in, or has completed a state rehabilitation plan or

is a service-connected disabled veteran, veteran of the Vietnam era, or veteran who is recently separated from military service.

(VI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was an ex-offender. An individual shall be treated as convicted if he or she was placed on probation by a state court without a finding of guilt.

(VII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a person eligible for or a recipient of any of the following:

(aa) Federal Supplemental Security Income benefits.

(bb) Aid to Families with Dependent Children.

(cc) Food stamps.

(dd) State and local general assistance.

(VIII) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a federally recognized Indian tribe, band, or other group of Native American descent.

(IX) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a resident of a targeted employment area (as defined in Section 7072 of the Government Code).

(X) An employee who qualified the taxpayer for the enterprise zone hiring credit under former Section 23622 or the program area hiring credit under former Section 23623.

(XI) Immediately preceding the qualified employee's commencement of employment with the taxpayer, was a member of a targeted group, as defined in Section 51(d) of the Internal Revenue Code, or its successor.

(B) Priority for employment shall be provided to an individual who is enrolled in a qualified program under the federal Job Training Partnership Act or the Greater Avenues for Independence Act of 1985 or who is eligible as a member of a targeted group under the Work Opportunity Tax Credit (Section 51 of the Internal Revenue Code), or its successor.

(5) ''Taxpayer'' means a corporation engaged in a trade or business within an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(6) ''Seasonal employment'' means employment by a taxpayer that has regular and predictable substantial reductions in trade or business operations.

(c) The taxpayer shall do both of the following:

(1) Obtain from the Employment Development Department, as permitted by federal law, the local county or city Job Training

Partnership Act administrative entity, the local county GAIN office or social services agency, or the local government administering the enterprise zone, a certification that provides that a qualified employee meets the eligibility requirements specified in clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b). The Employment Development Department may provide preliminary screening and referral to a certifying agency. The Employment Development Department shall develop a form for this purpose. The Department of Housing and Community Development shall develop regulations governing the issuance of certificates by local governments pursuant to subdivision (a) of Section 7086 of the Government Code.

(2) Retain a copy of the certification and provide it upon request to the Franchise Tax Board.

(d) (1) For purposes of this section:

(A) All employees of all corporations which are members of the same controlled group of corporations shall be treated as employed by a single taxpayer.

(B) The credit, if any, allowable by this section to each member shall be determined by reference to its proportionate share of the expense of the qualified wages giving rise to the credit, and shall be allocated in that manner.

(C) For purposes of this subdivision, ''controlled group of corporations'' means ''controlled group of corporations'' as defined in Section 1563(a) of the Internal Revenue Code, except that:

(i) ''More than 50 percent'' shall be substituted for ''at least 80 percent'' each place it appears in Section 1563(a)(1) of the Internal Revenue Code.

(ii) The determination shall be made without regard to subsections (a)(4) and (e)(3)(C) of Section 1563 of the Internal Revenue Code.

(2) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the ''predecessor'') or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section (other than subdivision (e)) for any calendar year ending after that acquisition, the employment relationship between a qualified employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(e) (1) (A) If the employment, other than seasonal employment, of any qualified employee with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the taxpayer, the tax imposed by this part for the taxable year in which that

employment is terminated shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(B) If the seasonal employment of any qualified employee, with respect to whom qualified wages are taken into account under subdivision (a) is not continued by the taxpayer for a period of 270 days of employment during the 60-month period beginning with the day the qualified employee commences seasonal employment with the taxpayer, the tax imposed by this part, for the taxable year that includes the 60th month following the month in which the qualified employee commences seasonal employment with the taxpayer, shall be increased by an amount equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that qualified employee.

(2) (A) Subparagraph (A) of paragraph (1) shall not apply to any of the following:

(i) A termination of employment of a qualified employee who voluntarily leaves the employment of the taxpayer.

(ii) A termination of employment of a qualified employee who, before the close of the period referred to in subparagraph (A) of paragraph (1), becomes disabled and unable to perform the services of that employment, unless that disability is removed before the close of that period and the taxpayer fails to offer reemployment to that employee.

(iii) A termination of employment of a qualified employee, if it is determined that the termination was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that employee.

(iv) A termination of employment of a qualified employee due to a substantial reduction in the trade or business operations of the taxpayer.

(v) A termination of employment of a qualified employee, if that employee is replaced by other qualified employees so as to create a net increase in both the number of employees and the hours of employment.

(B) Subparagraph (B) of paragraph (1) shall not apply to any of the following:

(i) A failure to continue the seasonal employment of a qualified employee who voluntarily fails to return to the seasonal employment of the taxpayer.

(ii) A failure to continue the seasonal employment of a qualified employee who, before the close of the period referred to in subparagraph (B) of paragraph (1), becomes disabled and unable to perform the services of that seasonal employment, unless that disability is removed

before the close of that period and the taxpayer fails to offer seasonal employment to that qualified employee.

(iii) A failure to continue the seasonal employment of a qualified employee, if it is determined that the failure to continue the seasonal employment was due to the misconduct (as defined in Sections 1256-30 to 1256-43, inclusive, of Title 22 of the California Code of Regulations) of that qualified employee.

(iv) A failure to continue seasonal employment of a qualified employee due to a substantial reduction in the regular seasonal trade or business operations of the taxpayer.

(v) A failure to continue the seasonal employment of a qualified employee, if that qualified employee is replaced by other qualified employees so as to create a net increase in both the number of seasonal employees and the hours of seasonal employment.

(C) For purposes of paragraph (1), the employment relationship between the taxpayer and a qualified employee shall not be treated as terminated by either of the following:

(i) By a transaction to which Section 381(a) of the Internal Revenue Code applies, if the qualified employee continues to be employed by the acquiring corporation.

(ii) By reason of a mere change in the form of conducting the trade or business of the taxpayer, if the qualified employee continues to be employed in that trade or business and the taxpayer retains a substantial interest in that trade or business.

(3) Any increase in tax under paragraph (1) shall not be treated as tax imposed by this part for purposes of determining the amount of any credit allowable under this part.

(f) Rules similar to the rules provided in Section 46(e) and (h) of the Internal Revenue Code shall apply to both of the following:

(1) An organization to which Section 593 of the Internal Revenue Code applies.

(2) A regulated investment company or a real estate investment trust subject to taxation under this part.

(g) For purposes of this section, ''enterprise zone'' means an area designated as an enterprise zone pursuant to Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code.

(h) The credit allowable under this section shall be reduced by the credit allowed under Sections 23623.5, 23625, and 23646 claimed for the same employee. The credit shall also be reduced by the federal credit allowed under Section 51 of the Internal Revenue Code.

In addition, any deduction otherwise allowed under this part for the wages or salaries paid or incurred by the taxpayer upon which the credit is based shall be reduced by the amount of the credit, prior to any reduction required by subdivision (i) or (j).

(i) In the case where the credit otherwise allowed under this section exceeds the ''tax'' for the taxable year, that portion of the credit that exceeds the ''tax'' may be carried over and added to the credit, if any, in succeeding taxable years, until the credit is exhausted. The credit shall be applied first to the earliest taxable years possible.

(j) (1) The amount of the credit otherwise allowed under this section and Section 23612.2, including any credit carryover from prior years, that may reduce the ''tax'' for the taxable year shall not exceed the amount of tax which would be imposed on the taxpayer's business income attributable to the enterprise zone determined as if that attributable income represented all of the income of the taxpayer subject to tax under this part.

(2) Attributable income shall be that portion of the taxpayer's California source business income that is apportioned to the enterprise zone. For that purpose, the taxpayer's business attributable to sources in this state first shall be determined in accordance with Chapter 17 (commencing with Section 25101). That business income shall be further apportioned to the enterprise zone in accordance with Article 2 (commencing with Section 25120) of Chapter 17, modified for purposes of this section in accordance with paragraph (3).

(3) Business income shall be apportioned to the enterprise zone by multiplying the total California business income of the taxpayer by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two. For purposes of this paragraph:

(A) The property factor is a fraction, the numerator of which is the average value of the taxpayer's real and tangible personal property owned or rented and used in the enterprise zone during the income year, and the denominator of which is the average value of all the taxpayer's real and tangible personal property owned or rented and used in this state during the income year.

(B) The payroll factor is a fraction, the numerator of which is the total amount paid by the taxpayer in the enterprise zone during the income year for compensation, and the denominator of which is the total compensation paid by the taxpayer in this state during the income year.

(4) The portion of any credit remaining, if any, after application of this subdivision, shall be carried over to succeeding taxable years, as if it were an amount exceeding the ''tax'' for the taxable year, as provided in subdivision (i).

(k) The changes made to this section by the act adding this subdivision shall apply to taxable years on or after January 1, 1997.

SEC. 68. Section 335 of the Unemployment Insurance Code is amended to read:

335. The department, in consultation and coordination with the film and movie industry, the Business, Transportation and Housing Agency, and the California Film Commission shall do all of the following, contingent upon the appropriation of funds in the annual Budget Act for these specified purposes:

(a) Research and maintain data on the employment and output of the film industry, including full-time, part-time, contract, and short duration or single event employees.

(b) Examine the ethnic diversity and representation of minorities in the entertainment industry.

(c) Determine the overall direct and indirect economic impact of the film industry.

(d) Monitor film industry employment and activity in other states and countries that compete with California for film production.

(e) Review the effect that federal and state laws and local ordinances have on the filmed entertainment industry.

(f) Prepare and release biannually a report to the chairpersons of the appropriate Senate and Assembly policy committees that details the information required by this section.

SEC. 69. Section 10200 of the Unemployment Insurance Code is amended to read:

10200. The Legislature finds and declares the following:

(a) California's economy is being challenged by competition from other states and overseas. In order to meet this challenge, California's employers, workers, labor organizations, and government need to invest in a skilled and productive workforce, and in developing the skills of frontline workers. For purposes of this section, ''frontline worker'' means a worker who directly produces or delivers goods or services.

The purpose of this chapter is to establish a strategically designed employment training program to promote a healthy labor market in a growing, competitive economy that shall fund only projects that meet the following criteria:

(1) Foster creation of high-wage, high-skilled jobs, or foster retention of high-wage, high-skilled jobs in manufacturing and other industries that are threatened by out-of-state and global competition, including, but not limited to, those industries in which targeted training resources for California's small and medium-sized business suppliers will increase the state's competitiveness to secure federal, private sector, and other nonstate funds. Provide for retraining contracts in companies that make a monetary or in-kind contribution to the funded training enhancements.

(2) Encourage industry-based investment in human resources development that promotes the competitiveness of California industry through productivity and product quality enhancements.

(3) Result in secure jobs for those who successfully complete training. All training shall be customized to the specific requirements of one or more employers or a discrete industry and shall include general skills that trainees can use in the future.

(4) Supplement, rather than displace, funds available through existing programs conducted by employers and government-funded training programs, such as the Workforce Investment Act of 1998, the Carl D. Perkins Vocational Education Act, CalWORKs, the Enterprise Zone Act, and the Stewart B. McKinney Homeless Assistance Act, the California Community Colleges Economic Development Program, or apportionment funds allocated to the community colleges, regional occupational centers and programs, or other local educational agencies. In addition, it is further the intention of the Legislature that programs developed pursuant to this chapter shall not replace, parallel, supplant, compete with, or duplicate in any way already existing approved apprenticeship programs.

(b) The Employment Training Panel, in funding projects that meet the requirements of subdivision (a), shall give funding priority to those projects that best meet the following goals:

(1) Result in the growth of the California economy by stimulating exports from the state, and the production of goods and services that would otherwise be imported from outside the state.

(2) Train new employees of firms locating or expanding in the state that provide high-skilled, high-wage jobs and are committed to an ongoing investment in the training of frontline workers.

(3) Develop workers with skills that prepare them for the challenges of a high performance workplace of the future.

(4) Train workers who have been displaced, have received notification of impending layoff, or are subject to displacement, because of a plant closure, workforce reduction, changes in technology, or significantly increasing levels of international and out-of-state competition.

(5) Are jointly developed by business management and worker representatives.

(6) Develop career ladders for workers.

(7) Promote the retention and expansion of the state's manufacturing workforce.

(c) The program established through this chapter is to be coordinated with all existing employment training programs and economic development programs, including, but not limited to, programs such as the Workforce Investment Act of 1998, the California Community Colleges, the regional occupational programs, vocational education programs, joint labor-management training programs, and related

programs under the Employment Development Department and the Business, Transportation and Housing Agency.

SEC. 70. Section 10202.5 of the Unemployment Insurance Code is amended to read:

10202.5. (a) The panel shall consist of eight persons, seven of whom shall be appointed as provided in subdivision (b), and shall have experience and a demonstrated interest in business management and employment relations. The Secretary of Business, Transportation and Housing, or his or her designee, shall also serve on the panel as an ex officio, voting member.

(b) (1) Two members of the panel shall be appointed by the Speaker of the Assembly. One of those members shall be a private sector labor representative and the other member shall be a business representative.

(2) Two members of the panel shall be appointed by the President pro Tempore of the Senate. One of those members shall be a private sector labor representative and the other member shall be a business representative.

(3) Three members of the panel shall be appointed by the Governor. One of those members shall be a private sector labor representative, one member shall be a business representative, and one member shall be a public member.

(4) Labor appointments shall be made from nominations from state labor federations. Business appointments shall be made from nominations from state business organizations and business trade associations.

(5) The Governor shall designate a member to chair the panel, and the person so designated shall serve as the chair of the panel at the pleasure of the Governor.

(c) The appointive members of the panel shall serve for two-year terms, except that of the initial members of the panel, one initial appointee of each appointing power shall serve for a one-year term.

(d) Appointive members of the panel shall receive the necessary traveling and other expenses incurred by them in the performance of their official duties out of appropriations made for the support of the panel. In addition, each appointive member of the panel shall receive one hundred dollars ($100) for each day attending meetings of the panel, and may receive one hundred dollars ($100) for each day spent conducting other official business of the panel, but not exceeding a maximum of three hundred dollars ($300) per month.

SEC. 71. Section 10205 of the Unemployment Insurance Code is amended to read:

10205. The panel shall do all of the following:

(a) Establish a three-year plan that shall be updated annually, based on the demand of employers for trained workers, changes in the state's

economy and labor markets, and continuous reviews of the effectiveness of panel training contracts. The initial three-year plan shall be submitted to the Governor and the Legislature not later than January 1, 1994. The initial update of the plan shall be submitted not later than July 1, 1994, and annual updates of the plan thereafter shall be submitted not later than July 1 of each year. In carrying out this section, the panel shall review information in the following areas:

(1) Labor market information, including the state-local labor market information program in the Employment Development Department, and economic forecasts.

(2) Evaluations of the effectiveness of training as measured by increased security of employment for workers and benefits to the California economy.

(3) The demand for training by industry, type of training, and size of employer.

(4) Changes in skills necessary to perform jobs, including changes in basic literacy skills.

(5) Changes in the demographics of the labor force and the population entering the labor market.

(6) Proposed expenditures by other agencies of federal Workforce Investment Act funds and other state and federal training and vocational education funds on eligible participants.

(b) Maintain a system to continuously monitor economic and other data required under this plan. If this data changes significantly during the life of the plan, the plan shall be amended by the panel. Each plan shall include all of the following:

(1) The panel's objectives with respect to the criteria and priorities specified in Section 10200 and the distribution of funds between new-hire training and retraining.

(2) The identification of specific industries, production and quality control techniques, and regions of the state where employment training funds would most benefit the state's economy and plans to encourage training in these areas, including specific standards and a system for expedited review of proposals that meet the standards.

(3) A system for expedited review of proposals that are substantially similar with respect to employer needs, training curriculum, duration of training, and costs of training, in order to encourage the development of proposals that meet the needs identified in paragraph (2).

(4) The panel's goals, operational objectives, and strategies to meet the needs of small businesses, including, but not limited to, those small businesses with 100 or fewer employees. These strategies proposed by the panel may include, but not be limited to, pilot demonstration projects designed to identify potential barriers that small businesses may

experience in accessing panel programs and workforce training resources, including barriers that may exist within small businesses.

(5) The research objectives of the panel that contribute to the effectiveness of this chapter in benefiting the economy of the state as a whole.

(6) A priority list of skills that are in such short supply that employers are choosing to not locate or expand their businesses in the state or are importing labor in response to these skills shortages.

(c) Solicit proposals and write contracts on the basis of proposals made directly to it. Contracts for the purpose of providing employment training may be written with any of the following:

(1) An employer or group of employers.

(2) A training agency.

(3) A local workforce investment board with the approval of the appropriate local elected officials in the local workforce investment area.

(4) A grant recipient or administrative entity selected pursuant to the federal Workforce Investment Act of 1998, with the approval of the local workforce investment board and the appropriate local elected officials.

These contracts shall be in the form of fixed-fee performance contracts. Notwithstanding any provision of law to the contrary, contracts entered into pursuant to this chapter shall not be subject to competitive bidding procedures. Contracts for training may be written for a period not to exceed 24 months for the purpose of administration by the panel and the contracting employer or any group of employers acting jointly or any training agency for the purpose of providing employment training.

(d) Fund training projects that best meet the priorities identified annually. In doing so, the panel shall seek to facilitate the employment of the maximum number of eligible participants.

(e) Establish minimum standards for the consideration of proposals, which shall include, but not be limited to, the identification of employers who have been contacted by the contractor and who have provided reasonable assurance that they will employ successful trainees, the number of jobs available, the skill requirements for the identified jobs, the projected cost per person trained, hired, and retained in employment, the wages paid successful trainees upon placement, and the curriculum for the training. No proposal shall be considered or approved that proposes training for employment covered by a collective bargaining agreement unless the signatory labor organization agrees in writing.

(f) Develop a process by which local workforce investment boards may apply for marketing resources for the purpose of identifying local employers that have training needs that reflect the priorities of the panel. The panel may delegate its authority to approve contracts for training to local workforce investment boards, provided that no contract approved

exceeds fifty thousand dollars ($50,000) per project without prior approval of the panel and all contracts meet the provisions of this chapter and are consistent with the annual priorities identified by the panel.

(g) Ensure the provision of adequate fiscal and accounting controls for, monitoring and auditing of, and other appropriate technical and administrative assistance to, projects funded by this chapter.

(h) Provide for evaluation of projects funded by this chapter. The evaluations shall assess the effectiveness of training previously funded by the panel to improve job security and stability for workers, and benefit participating employers and the state's economy, and shall compare the wages of trainees in the 12-month period prior to training as well as the 12-month period subsequent to completion of training, as reflected in the department's unemployment insurance tax records. Individual project evaluations shall contain a summary description of the project, the number of persons entering training, the number of persons completing training, the number of persons employed at the end of the project, the number of persons still employed three months after the end of the project, the wages paid, the total costs of the project, and the total reimbursement received from the Employment Training Fund.

(i) Report annually to the Legislature, by November 30, on projects operating during the previous state fiscal year. These annual reports shall provide separate summaries of all of the following:

(1) Projects completed during the year, including their individual and aggregate performance and cost.

(2) Projects not completed during the year, briefly describing each project and identifying approved contract amounts by contract and for this category as a whole, and identifying any projects in which funds are expected to be disencumbered.

(3) Projects terminated prior to completion and the reasons for the termination.

(4) A description of the amount, type, and effectiveness of literacy training funded by the panel.

(5) Results of complete project evaluations.

(6) A description of pilot projects, and the strategies that were identified through these projects, to increase access by small businesses to panel training contracts.

(7) A listing of training projects that were funded in high unemployment areas and a detailed description of the policies and procedures that were used to designate geographic regions and municipalities as high unemployment areas.

In addition, based upon its experience in administering job training projects, the panel shall include in these reports policy recommendations concerning the impact of job training and the panel's program on

economic development, labor-management relations, employment security, and other related issues.

(j) Conduct ongoing reviews of panel policies with the goal of developing an improved process for developing, funding, and implementing panel contracts as described in this chapter.

(k) Expedite the processing of contracts for firms considering locating or expanding businesses in the state, in accordance with the priorities for employment training programs set forth in subdivision (b) of Section 10200.

(*l*) Coordinate and consult regularly with business groups and labor organizations, the California Workforce Investment Board, the State Department of Education, the office of the Chancellor of the California Community Colleges, and the Employment Development Department.

(m) Adopt by regulation procedures for the conduct of panel business, including the scheduling and conduct of meetings, the review of proposals, the disclosure of contacts between panel members and parties at interest concerning particular proposals, contracts or cases before the panel or its staff, the awarding of contracts, the administration of contracts, and the payment of amounts due to contractors. All decisions by the panel shall be made by resolution of the panel and any adverse decision shall include a statement of the reason for the decision.

(n) Adopt regulations and procedures providing reasonable confidentiality for the proprietary information of employers seeking training funds from the panel if the public disclosure of that information would result in an unfair competitive disadvantage to the employer supplying the information. The panel may not withhold information from the public regarding its operations, procedures, and decisions that would otherwise be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(o) Review and comment on the budget and performance of any program, project, or activity funded by the panel utilizing funds collected pursuant to Section 976.6.

SEC. 72. Section 10206 of the Unemployment Insurance Code is amended to read:

10206. (a) The panel may allocate money in the fund for any of the following purposes:

(1) Reimbursement of reasonable training costs, and administrative costs incurred by contractors. In making a determination of costs to be reimbursed under this paragraph, the panel may allocate funds in accordance with any of the following methods:

(A) For purposes of providing simplified fixed-fee performance contracts, a flat rate per hour for categories of training that are substantially similar with respect to content, methodology, and duration,

as determined by the panel, not to exceed the reasonable and normal costs for the training. The panel shall periodically adjust the standardized rates established pursuant to this paragraph to reflect changes in training costs.

(B) A complete review of the proposal and its costs, including a budget listing the planned costs of training, including personnel, fringe benefits, equipment, supplies, fees for consulting or administrative services, and other costs attributable to training; the services provided by subcontractors; the length and complexity of the training; the method of training; the wages and occupations following training; whether the trainees are new hires or retrainees; and the cost of similar training that the panel has funded previously. The cost of administration shall not exceed 15 percent of the training costs under this paragraph, except that for new hire training the panel may fund administrative costs of up to 25 percent of the training cost.

(C) The panel may modify the specific requirements of this paragraph as they apply to employers or contractors proposing projects that involve training for a significant number of small employers in the same project.

(D) A contractor is prohibited from utilizing any funds earned or paid as advances or progress payments for the purpose of making payments to any other individual or entity, either directly or indirectly, for costs incurred as a finder's fee or for other compensation related to the predevelopment or development phase of a training program, which is based on a percentage of the preliminary or final panel award to the contractor for the training project.

(2) (A) Costs of program administration incurred under this chapter. These costs shall be reviewed annually by the Department of Finance and the Legislature and determined through the normal budgetary process.

(B) The panel's administrative costs, exclusive of the cost of administering Section 976.6, shall not exceed 15 percent of the total amount annually appropriated for expenditure by the panel. Expenditures for marketing, research, and evaluations provided under the contract to the panel that otherwise would have been provided directly by the panel shall not be included in this limitation.

(3) Service related to the purposes of this chapter provided by the Small Business Development Centers.

(b) For all training contracts, the panel shall establish requirements for in-kind contributions by either the contractor or the employer that reflect a substantial commitment on the part of the contractor or the employer to the value of the training. In developing these requirements, the panel shall take into account the ability of the contractor or the employer, because of size or financial condition, to make any contribution, and the ability of the Employment Training Fund to meet

the demand for training authorized by this chapter. In developing policies regarding in-kind contributions, the panel shall hold public hearings.

SEC. 73. Section 10213.5 of the Unemployment Insurance Code is repealed.

SEC. 74. Section 10525 of the Unemployment Insurance Code is amended to read:

10525. The coordination and special services plan shall also include a dislocated workers assistance plan to provide services to eligible workers pursuant to Chapter 7.5 (commencing with Section 15075) of Division 8. The dislocated workers assistance plan shall meet the requirements of Title III of the federal Job Training Partnership Act (Public Law 97-300), as amended, and include all of the following:

(a) The specific responsibilities of each of the state agencies administering dislocated workers assistance programs.

(b) Provide that services to a substantial number of members of a labor organization shall be established only after full consultation with the labor organization.

(c) Prescribe program standards, including, but not limited to, standards based on job placement and job retention.

(d) Integration of displaced worker services with services and payments made available under the federal Trade Act of 1974, as amended (19 U.S.C. Sec. 2101 and following), unemployment insurance benefits, the Job Service, vocational education programs, and other programs provided under this division.

(e) Coordination of local dislocated worker rapid response assistance planning with the federal Worker Adjustment and Retraining Notification Act, Public Law 100-379, by designation of local service delivery area grant administrators as local governmental entities that will also formally receive the 60-day notice required under the federal act.

SEC. 75. Section 10529 of the Unemployment Insurance Code is amended to read:

10529. (a) The services provided by the existing labor market information system within the department shall include workforce and economic information that does all of the following:

(1) Provides data and information to the state Workforce Investment Board created pursuant to Section 2821 of Title 29 of the United States Code, to enable the board to plan, operate, and evaluate investments in the state's workforce preparation system that will make the California economy more productive and competitive.

(2) Provides data and information to the California Economic Strategy Panel for continuous strategic planning and the development of policies for the growth and competitiveness of the California economy.

(3) Identifies and combines information from various state data bases to produce useful, geographically based analysis and products, to the extent possible using existing resources.

(4) Provides technical assistance related to accessing workforce and economic information to local governments, public-sector entities, research institutes, nonprofit organizations, and community groups that have various levels of expertise, to the extent possible using existing resources.

(b) The department shall coordinate with the State Department of Education, the Chancellor of the California Community Colleges, the State Department of Social Services, the California Postsecondary Education Commission, the Department of Finance, and the Franchise Tax Board in developing economic and workforce information. The department shall also solicit input in the operation of the program from public and private agencies and individuals that make use of the labor market information provided by the department.

SEC. 76. Section 11010 of the Unemployment Insurance Code is amended to read:

11010. (a) The Legislature finds and declares the following:

(1) California must have a world class system of education and training linked to economic development in order to meet the demands of global economic competition.

(2) The California Economic Strategy Panel determined that California's economy is undergoing a dramatic transformation whereby California is in an established leadership position with respect to a number of emerging industries representing a new economy of the 21st century, and that education and work force preparation are critical to the growth and competitiveness of California's economy.

(3) California's work force preparation programs, including job training, job placement, and education, spend over six billion dollars ($6,000,000,000) annually serving 6,700,000 students, displaced and unemployed workers, welfare recipients, and incumbent workers.

(4) At least 22 state programs and many federal and local programs provide these work force preparation services.

(5) With the increasing demand to educate and train the youth and adults in this state with the skills necessary to obtain and retain employment especially in the industries essential for its economic growth, California needs to maximize the effective use of resources for its work force preparation programs to create a more coherent, comprehensive, accountable, and customer-focused system.

(6) An effective work force preparation system is necessary for California to meet the time limit and work force preparation requirements of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193).

(7) In order to accomplish this, the public and private sector entities responsible for economic development, education, and work force preparation must collaborate at the state and local levels.

(8) This collaboration must be compatible with the existing missions and governance structures of all entities involved.

(9) The major objective of this act is the integration of existing local and regional partnerships that support initiatives in education reform, work force preparation, and economic development.

(10) In order to promote this collaboration, the Secretary of California Health and Human Services, the Secretary of Labor and Workforce Development, the Chancellor of the California Community Colleges, and the Superintendent of Public Instruction shall, in consultation with state, regional, and local stakeholders, and customers, collaborate in the development of a state work force development system and shall encourage and support local partners to develop regional work force collaboratives.

(b) The Legislature hereby enacts the Regional Workforce Preparation and Economic Development Act to demonstrate how, through the collaboration of state and local resources, education, work force preparation and economic development services can be delivered to clients in a more responsive, integrated, and effective manner.

SEC. 77. Section 11011 of the Unemployment Insurance Code is amended to read:

11011. (a) On or before April 1, 1998, the Secretary of California Health and Human Services, the Chancellor of the California Community Colleges with the consent of the Board of Governors, and the Superintendent of Public Instruction, with the consent of the State Board of Education, shall enter into a memorandum of understanding to develop and maintain a plan including a schedule to do the following:

(1) (A) Develop a state work force development plan to create an integrated, high-quality work force development system out of the current array of job training and vocational education programs in order to prepare emerging, transitional, and current workers to be employed in the state's global economy. The plan shall serve as a framework for the development of public policy, fiscal investment, and operation of all state work force education and training programs.

(B) The plan, which shall be updated every five years, shall, at a minimum, include all of the following:

(i) Long term goals for the state's work force development system.

(ii) Short term objectives and benchmarks that the state will use to measure its progress towards meeting the state's goals for the state work force development system and its programs.

(iii) Identification of the role each institution and program plays in the statewide system and mechanism of articulation among programs.

(iv) A strategy for assessing unmet work force preparation needs and areas of duplicative services and a description of measures to assure coordination, eliminate duplication, and maximize or redirect funding to more effectively deliver services to meet the state's work force development needs.

(v) A strategy for consolidating multiple planning processes.

(vi) A strategy with benchmarks for implementing a system of universal access to work force development services ensuring access to comprehensive services in all rural and urban areas of the state.

(C) The plan shall be developed through a collaborative process that shall include review and input by state, regional, and local work force education and training providers, private industry councils, and representatives of business and labor.

(D) A report with final recommendations on how state, local, and regional agencies and programs can deliver seamless, high-quality services to clients shall be transmitted to the Governor and the Legislature by October 1, 1999.

(2) Initiate a competitive process to select a minimum of five regional education, work force preparation, and economic development collaboratives, known as regional collaboratives, that will receive financial and program incentives to develop local partnerships to maximize the delivery of employment, training, and education services. These partnerships shall collaborate in the development of shared systems to improve their efficiency and effectiveness in delivering work force development services.

(3) Identify new and redirected resources, federal and state waivers, and legislative changes necessary to enhance the effectiveness of regional collaboratives.

(b) Regional collaboratives shall have representation from the following public and private entities:

(1) The Employment Development Department.

(2) The local Job Training Partnership Act administrative entity.

(3) Community college districts.

(4) Local school districts, including those that provide adult education and regional occupational centers or programs.

(5) Regional occupational centers serving adults.

(6) Entities administering local public assistance welfare-to-work programs.

(7) Local economic development organizations.

(8) The private sector, including both business and labor.

In addition, the competitive selection process shall emphasize the expectation that these regional collaboratives will have broad representation of all public, private, and nonprofit agencies that have an

interest in education, economic development, welfare-to-work, and work force development.

(c) Regional collaboratives shall be selected and shall receive financial and program incentives effective July 1, 1998.

(d) From existing state and federal funds available for expenditure for the purposes of this section, the state partners shall identify five million dollars ($5,000,000) per year for each of three years for distribution to a minimum of five regional collaboratives, in order to create systemic change that results in increased collaboration and service delivery within each region.

SEC. 78. Section 12112 of the Unemployment Insurance Code is amended to read:

12112. A procedure for applying for grants shall be developed by a panel consisting of the Directors of the Employment Development Department, and the Department of Industrial Relations, who shall also make the final decision on the awarding of grants.

SEC. 79. Section 12151 of the Unemployment Insurance Code is amended to read:

12151. It is the intent of the Legislature that the Employment Development Department, with the assistance of the Department of Industrial Relations, seek and apply for funds from the federal government and other potential sources to implement the program established under this division.

SEC. 80. Section 15076 of the Unemployment Insurance Code is amended to read:

15076. The private industry councils in each service delivery area shall recommend and approve an employment and training plan for displaced workers, which shall meet the requirements of the federal Job Training Partnership Act, and in addition provide for each of the following:

(a) Identification, in conjunction with the Employment Development Department, of individuals eligible for assistance due to any of the following facts:

(1) The individuals have been terminated or laid off or have received a notice of termination or layoff from employment, are eligible for or have exhausted their entitlement to unemployment compensation, and are unlikely to return to their previous industry or occupation.

(2) The individuals have been terminated from employment, or have received a notice of termination of employment, as a result of any permanent closure of, or substantial layoff at, a plant, facility, or enterprise.

(3) The individuals are long-term unemployed and have limited opportunities for employment or reemployment in the same or a similar

occupation in the area in which they reside, including older individuals who have had substantial barriers to employment by reason of age.

(4) The individuals were self-employed (including farmers and ranchers) and are unemployed as a result of general economic conditions in the community in which they reside or because of natural disasters.

(5) The individuals are displaced homemakers who may be provided services as additional dislocated workers without adversely affecting the delivery of services to eligible dislocated workers.

(b) Determination of job opportunities that exist within the local labor market area or outside the labor market area for which displaced workers could be retrained, and determination of what training for identified employment opportunities exists or could be provided within the local area. This determination shall be undertaken by use of both of the following:

(1) The State-Local Cooperative Labor Market Information Program established in Section 15074.

(2) As appropriate, representatives of the Employment Training Panel in accordance with its functions pursuant to Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3.

(c) Informing eligible displaced workers of training opportunities. This process shall be undertaken in conjunction with the Employment Development Department.

(d) A program for dislocated workers assistance drawing, as appropriate, upon existing facilities and resources, which may include, but not be limited to, all of the following:

(1) Dislocated worker employment services and related assistance, provided that employment-related services are coordinated with, and do not duplicate, those available and accessible services of the Employment Development Department, including all of the following:

(A) Job search assistance.

(B) Job development.

(C) Support services, such as financial and personal counseling, child care and related children's services, and assistance in obtaining equipment and supplies necessary for retraining or new employment.

(D) Relocation assistance, if it is determined that an eligible individual cannot obtain employment in the commuting area and has secured suitable long duration employment or a bona fide job offer.

(E) Prelayoff assistance.

(F) Programs conducted in cooperation with employers or labor organizations to provide early intervention in the event of closures of plants or facilities.

(2) Training in job skills for which demand exceeds supply, including, where feasible, job training administered by the Employment

Training Panel pursuant to Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3.

(3) Commuting assistance, consistent with the Displaced Worker Transportation Program established pursuant to Section 14002.5 of the Government Code.

(e) Consultation with affected labor organizations, in the case of any assistance program that will provide services to a substantial number of members of these labor organizations.

(f) Involvement of displaced workers in program delivery, including, as appropriate, paid employment for these individuals in providing services under the program.

(g) Utilization of services and resources from other sources, public and private, and specific procedures for coordination with other programs, in order to maximize services for displaced workers and their families and increase employment and training opportunities. Examples of programs to be included are the following:

(1) Other employment and training and education programs.

(2) Social services, including child care and related children's services.

(3) Housing programs, including low-income weatherization and home energy conservation programs.

(4) Transportation related programs, including highway, bridge, and mass transit construction and repair.

(5) Other programs related to infrastructure development and repair.

(6) Economic development programs deemed applicable.

(h) Contracting with the Employment Development Department in order to provide funding for special services the department is to provide under the local displaced worker assistance program.

(i) Coordination with neighboring jurisdictions, in cases of plant closings or mass layoffs that cross service delivery areas.

(j) A system of program and fiscal accountability to ensure maximum benefit from the expenditure of federal and state funds and that is consistent with procedures established in the state's job training plan pursuant to Section 121 of the federal Job Training Partnership Act (Public Law 93-700), as amended, including all of the following:

(1) Performance goals and standards, established by the State Job Training Coordinating Council, including standards for both of the following:

(A) Placement and retention in unsubsidized employment.

(B) Earnings and wages.

(2) Procedures for reporting on the outcome of the program, which include all of the following:

(A) A description of activities conducted.

(B) Characteristics of participants.

(C) The extent to which the activities conducted achieved relevant performance goals.

(3) Fiscal control, accounting, audit, and related provisions.

(k) Identification of the administrative entity of the local service delivery area or consortium that shall also receive the 60-day notification required to be given to units of local government pursuant to the federal Worker Adjustment and Retraining Notification Act (Public Law 100-379).

(*l*) Integration of services and benefits available under Chapter 2 of Title II of the federal Trade Act of 1974 (19 U.S.C. Sec. 2101 and following) and Article 1.5 (commencing with Section 1266) of Chapter 5 of Part 1 of Division 1.

The plan shall be reviewed and approved pursuant to Sections 15045 and 15046.

SEC. 81. Section 15076.5 of the Unemployment Insurance Code is amended to read:

15076.5. The California Workforce Investment Board shall do all of the following:

(a) Be the lead state agency to establish policies for:

(1) Alleviating adverse conditions that might cause plant closures and, where closures are unavoidable, assisting local efforts to secure alternative employment and retraining opportunities for displaced workers.

(2) Marshaling available state and federal resources to aid workers and communities affected by major plant closures and to foster long-term economic vitality, industrial growth, and job opportunities.

(3) Integrating appropriate activities of the Business, Transportation and Housing Agency, the Employment Development Department, the Employment Training Panel, the Department of Industrial Relations, the State Department of Education, the Chancellor's Office of the California Community Colleges, and the Governor's Office of Planning and Research with the State Dislocated Worker Unit.

(4) Collection of data and preparation of economic analyses and reporting, intended to provide better and more detailed assessments of future trends within the industrial, commercial, and agricultural sectors of the economy.

(b) Review and comment on the plans for displaced worker assistance programs submitted pursuant to Section 15076.

(c) Recommend to the Governor necessary components of state plans under the jurisdiction of other state offices, departments, or agencies that administer programs appropriate for coordination with dislocated worker assistance programs authorized by this chapter.

(d) Review and make recommendations to the Governor and the Legislature regarding changes needed in current federal and state

statutes and programs in order to minimize adverse consequences of plant closures and promote rapid reemployment of workers and revitalization of communities.

SEC. 82. Section 15077 of the Unemployment Insurance Code is amended to read:

15077. The Employment Development Department shall do all of the following:

(a) Review and approve the plans for displaced workers' assistance submitted pursuant to Section 15076.

(b) According to policies established by the State Job Training Coordinating Council and state law, coordinate displaced workers assistance efforts in situations where plant closures or layoffs within an industry have a significant statewide impact.

(c) Encourage and coordinate early identification of situations of potential plant closures, and provide any assistance that may be necessary to alleviate economic dislocation.

(d) Cooperate with the Employment Training Panel in the coordination of training and services for displaced workers eligible under Chapter 3.5 (commencing with Section 10200) of Part 1 of Division 3.

(e) Serve as the state agency providing any information and procedural activities that may be required by the federal government to ensure federal funding for dislocated workers assistance.

(f) Provide for the submission of applications to the United States Secretary of Labor for additional federal funding to the state in accordance with Title III of the federal Job Training Partnership Act (Public Law 93-700), as amended.

(g) Operate a monitoring, reporting, and management system that provides an adequate information base for effective program planning, management, review, and evaluation.

(h) Administer federal and state funds appropriated for the support of demonstration and special assistance programs for dislocated workers.

(i) Provide specific periodic notification to employers of 100 or more employees of their potential responsibilities under the federal Worker Adjustment and Retraining Notification Act (P.L. 100-379), the availability of services to employees and employers under this and other state laws, and instructions on how to comply with those laws and obtain appropriate services.

SEC. 83. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary changes to implement the Budget Act of 2004 it is necessary that this act take effect immediately.

CHAPTER 226

An act to amend Section 37022 of the Public Resources Code, and to amend Sections 6592, 17052.2, 17053.30, 19164, and 23630 of, to amend, repeal, and add Section 6248 of, to add Section 19777.5 to, to add Article 4 (commencing with Section 19590) to Chapter 7 of Part 10.2 of Division 2 of, to add Chapter 9.1 (commencing with Section 19730) to Part 10.2 of Division 2 of, and to repeal and add Article 2 (commencing with Section 7070) of Chapter 8 of Part 1 of Division 2 of, the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 37022 of the Public Resources Code is amended to read:

37022. (a) No more than a total of one hundred million dollars ($100,000,000) in tax credits may be awarded pursuant to this division.

(b) Tax credits may be awarded pursuant to this division in the fiscal years 2000–01, 2001–02, 2002–03, 2003–04, 2004–05, 2005–06, 2006–07, and 2007–08. No tax credits may be awarded subsequent to fiscal year 2007–08 without further statutory authorization.

(c) In addition to the limitations in subdivisions (a) and (b), and except as provided in subdivision (d), tax credits may not be awarded pursuant to this division between July 1, 2002, and June 30, 2005, inclusive.

(d) Tax credits may be awarded pursuant to this division between July 1, 2002, and June 30, 2005, inclusive, only if the amount of all lost revenue resulting from the award of tax credits during that time is reimbursed by transfer to the General Fund of moneys that are not from the General Fund.

(e) When a person submits an application to the board pursuant to Chapter 4 (commencing with Section 37010) that is conditionally approved by the board, and tax credits are not awarded due to the prohibition set forth in subdivision (c), until June 30, 2005, the person shall remain eligible, without a requirement that a subsequent application be submitted, to be considered for the award of tax credits

pursuant to this division, if, on or before June 30, 2005, moneys become available to reimburse the General Fund pursuant to subdivision (d).

SEC. 2. Section 6248 of the Revenue and Taxation Code is amended to read:

6248. (a) On and after the effective date of this section there shall be a rebuttable presumption that any vehicle, vessel, or aircraft bought outside of this state, and which is brought into California within 12 months from the date of its purchase, was acquired for storage, use, or other consumption in this state and is subject to use tax if any of the following occur:

(1) The vehicle, vessel, or aircraft was purchased by a California resident as defined in Section 516 of the Vehicle Code.

(2) In the case of a vehicle, the vehicle was subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the VehicleCode during the first 12 months of ownership.

(3) In the case of a vessel or aircraft, that vessel or aircraft was subject to property tax in this state during the first 12 months of ownership.

(4) The vehicle, vessel, or aircraft is used or stored in this state more than one-half of the time during the first 12 months of ownership.

(b) This presumption may be controverted by documentary evidence that the vehicle, vessel, or aircraft was purchased for use outside of this state during the first 12 months of ownership. This evidence may include, but is not limited to, evidence of registration of that vehicle, vessel, or aircraft, with the proper authority, outside of this state.

(c) This section does not apply to any vehicle, vessel, or aircraft used in interstate or foreign commerce pursuant to regulations prescribed by the board.

(d) The amendments made to this section by the act adding this subdivision do not apply to any vehicle, vessel, or aircraft that is either purchased, or is the subject of a binding purchase contract that is entered into, on or before the operative date of this subdivision.

(e) (1) Notwithstanding subdivision (a), aircraft or vessels brought into this state for the purpose of repair, retrofit, or modification shall not be deemed to be acquired for storage, use, or other consumption in this state.

(2) This subdivision does not apply if, during the period following the time the aircraft or vessel is brought into this state and ending when the repair, retrofit, or modification of the aircraft or vessel is complete, more than 25 hours of airtime in the case of an airplane or 25 hours of sailing time in the case of a vessel are logged on the aircraft or vessel by the registered owner of that aircraft or vessel or by an authorized agent operating the aircraft or vessel on behalf of the registered owner of the aircraft or vessel. The calculation of airtime or sailing time logged on the aircraft or vessel does not include airtime or sailing time following the

completion of the repair, retrofit, or modification of the aircraft or vessel that is logged for the sole purpose of returning or delivering the aircraft or vessel to a point outside of this state.

(3) This subdivision applies to aircraft or vessels brought into this state for the purpose of repair, retrofit, or modification on or after the operative date of this subdivision.

(f) The amendments made by the act adding this subdivision shall become operative on October 1, 2004.

(g) The Legislative Analyst's office shall conduct a study of the economic impacts of the amendments made to this section by the act adding this subdivision, and shall report its findings to the Legislature on or before June 30, 2006.

(h) This section shall remain in effect only until July 1, 2006, and as of that date is repealed.

SEC. 3. Section 6248 is added to the Revenue and Taxation Code, to read:

6248. (a) On and after July 1, 2006, there shall be a rebuttable presumption that any vehicle bought outside of this State which is brought into California within 90 days from the date of its purchase, and which is subject to registration under Chapter 1 (commencing with Section 4000) of Division 3 of the Vehicle Code, was acquired for storage, use, or other consumption in this State.

(b) This section shall become operative on July 1, 2006.

SEC. 4. Section 6592 of the Revenue and Taxation Code is amended to read:

6592. (a) If the board finds that a person's failure to make a timely return or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person shall be relieved of the penalties provided by Sections 6476, 6477, 6479.3, 6480.4, 6480.8, 6511, 6565, 6591, 7051.2, 7073, and 7074.

(b) Except as provided in subdivision (c) any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provides for efficient resolution of requests for relief pursuant to this section.

SEC. 5. Article 2 (commencing with Section 7070) of Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code is repealed.

SEC. 6. Article 2 (commencing with Section 7070) is added to Chapter 8 of Part 1 of Division 2 of the Revenue and Taxation Code, to read:

Article 2. Tax Amnesty Program

7070. The board shall develop and administer a tax amnesty program for taxpayers subject to Part 1 (commencing with Section 6001), as provided in this article.

7071. The tax amnesty program shall be conducted for a two month period beginning February 1, 2005 through March 31, 2005, inclusive, or during a timeframe ending no later than June 30, 2005. The program shall apply to tax liabilities due and payable for tax reporting periods beginning before January 1, 2003.

7072. (a) For any taxpayer who meets the requirements of Section 7073:

(1) The board shall waive all penalties imposed by this part, for the tax reporting periods for which tax amnesty is allowed for the nonreporting or underreporting of tax liabilities or the nonpayment of any taxes previously determined or proposed to be determined.

(2) Except as provided in subdivision (b), no criminal action shall be brought against the taxpayer, for the tax reporting periods for which tax amnesty is requested, for the nonreporting or underreporting of tax liabilities.

(b) This section does not apply to violations of this part for which, as of the first day of the amnesty period specified in Section 7071, (1) the taxpayer is on notice of a criminal investigation by a complaint having been filed against him or her or by written notice having been mailed to him or her that he or she is under criminal investigation, or (2) a court proceeding has already been initiated.

(c) No refund or credit shall be granted of any penalty paid prior to the time the taxpayer makes a request for tax amnesty pursuant to Section 7073.

7073. (a) This article shall apply to any taxpayer who, during the amnesty period specified in Section 7071, meets all of the following:

(1) Is eligible to participate in the tax amnesty program.

(2) Files a completed amnesty application with the board, signed under penalty of perjury, to participate in the tax amnesty program.

(3) Within 60 days after the conclusion of the tax amnesty period, does all of the following:

(A) Files completed tax returns for all tax reporting periods for which he or she has not previously filed a tax return and files completed amended returns for all tax reporting periods for which he or she underreported his or her tax liability.

(B) Pays in full the taxes and interest due for all periods for which amnesty is requested, or applies for an installment agreement under subdivision (b).

(C) For taxpayers who have not paid in full any tax liabilities due and payable for tax reporting periods beginning before January 1, 2003, pays in full the taxes and interest due for each period for that portion of the proposed determination for each period for which amnesty is requested or applies for an installment payment agreement under subdivision (b).

(4) In the case of any taxpayer that has filed for bankruptcy protection under Title 11 of the United States Code, submits an order from a Federal Bankruptcy Court allowing the taxpayer to participate in the amnesty program.

(b) The board may enter into an installment payment agreement in lieu of the complete payment required under subparagraph (B) of paragraph (3) of subdivision (a), but only if final payment under the terms of that installment payment agreement is due and is paid no later than June 30, 2006. The installment payment agreement shall include interest on the outstanding amount due at the rate prescribed by law. Failure by the taxpayer to fully comply with the terms of the installment payment agreement shall render the waiver of penalties null and void, unless the board determines that the failure was due to reasonable causes, and the total amount of tax, interest, and all penalties shall be immediately due and payable.

(c) If, subsequent to the amnesty period specified in Section 7071, the board issues a deficiency determination upon a return filed pursuant to subdivision (a), or upon any other nonreporting or underreporting of tax liability by any person who could have otherwise been eligible for amnesty, the board shall impose penalties at a rate that is double the rate of penalties described in law and criminal action may be brought under this part only with respect to the difference between the amount shown on that return and the correct amount of tax, or the amount of unreported or underreported tax, whichever the case may be. This action may not invalidate any waivers granted under Section 7072.

(d) If the board issues a deficiency determination under conditions described in subdivision (c), the board may issue that deficiency determination within 10 years from the last day of the calendar month following the quarterly period for which the amount is proposed to be determined.

(e) The application required under paragraph (2) of subdivision (a) shall be in the form and manner specified by the board, but in no case shall a mere payment of any taxes and interest due, in whole or in part, for any period otherwise eligible for amnesty under this part, be deemed to constitute an acceptable amnesty application under this part. For purposes of the preceding sentence, the application of a refund from one period to offset a tax liability for another period otherwise eligible for amnesty shall not be allowed without the filing of an amnesty application under this part.

7074. (a) Except for taxpayers who have entered into an installment payment agreement pursuant to subdivision (b) of Section 7073, there shall be added to the tax for each period for which amnesty could have been requested:

(1) For amounts that are due and payable on the last date of the amnesty period, an amount equal to 50 percent of the accrued interest payable under Section 6591 for the period beginning on the date in which the tax was due and ending on the last day of the amnesty period specified in Section 7071.

(2) An amount equal to 50 percent of the interest computed under Section 6591 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the date in which the tax was due and ending on the last day of the amnesty period specified in Section 7071.

(b) The penalty imposed by this section is in addition to any other penalty imposed under this part.

(c) Article 2 (commencing with Section 6481) does not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(d) Notwithstanding Chapter 7 (commencing with Section 6901), a taxpayer may not file a claim for refund for any amounts paid in connection with the penalty imposed in subdivision (a).

7075. Any taxpayer who has an existing installment payment agreement under Section 6832 as of the start of the amnesty program, and who does not participate in the amnesty program, may not be subject to the penalty imposed under Section 7074.

7076. The board shall issue forms and instructions and take other actions needed to implement this article. The provisions contained in subdivision (c) of Section 19735, to the extent feasible and practical, shall also apply to the board.

7077. The board shall adequately publicize the tax penalty amnesty program so as to maximize public awareness of the participation in the program. The board shall coordinate to the highest degree possible its publicity efforts and other actions taken in implementing this article with similar programs administered by the Franchise Tax Board.

7078. Subdivision (b) of Section 19736, to the extent feasible and practical, shall also apply to the board.

SEC. 7. Section 17052.2 of the Revenue and Taxation Code is amended to read:

17052.2. (a) For each taxable year beginning on or after January 1, 2000, and before January 1, 2002, for each taxable year beginning on or after January 1, 2003, and before January 1, 2004, and for each taxable year beginning on and after January 1, 2006, there shall be allowed as a credit against the ''net tax'' (as defined by Section 17039) to a

credentialed teacher an amount equal to the amount determined in subdivision (b).

(b) The amount of the credit shall be the lesser of the amounts computed under paragraph (1) or (2):

(1) In the case of any credentialed teacher who has, as of the last day of the taxable year:

(A) Completed at least four but less than six years of service as a credentialed teacher, the credit shall be two hundred fifty dollars ($250).

(B) Completed at least six but less than 11 years of service as a credentialed teacher, the credit shall be five hundred dollars ($500).

(C) Completed at least 11 but less than 20 years of service as a credentialed teacher, the credit shall be one thousand dollars ($1,000).

(D) Completed 20 or more years of service as a credentialed teacher, the credit shall be one thousand five hundred dollars ($1,500).

(E) For purposes of determining years of service, years of service performed as a teacher in a qualifying educational institution, which otherwise meets the criteria specified in paragraph (2) of subdivision (c) except that the qualifying educational institution is not located in this state, in another state shall qualify for each year the teacher was credentialed by the public education agency in that state.

(2) Fifty percent of the amount determined as follows:

(A) Divide the amount received by the taxpayer as wages and salary for services as a credentialed teacher, as defined in paragraph (3) of subdivision (c), by the taxpayer's total adjusted gross income from all sources.

(B) Multiply the taxpayer's total tax, as defined in paragraph (4) of subdivision (c), by a ratio, not to exceed 1.00, that is otherwise equal to the ratio determined for the taxpayer under subparagraph (A).

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

(1) ''Credentialed teacher'' means a person who holds a preliminary or professional clear credential as determined by the Commission on Teacher Credentialing pursuant to Article 1 (commencing with Section 44200) of Chapter 2 of Part 25 of Division 2 of Title 2 of the Education Code and who teaches at a qualifying educational institution.

(2) ''Qualifying educational institution'' means any elementary, secondary, or vocational-technical school located in this state providing education for kindergarten, grades 1 to 12, inclusive, or any part thereof. ''Qualifying educational institution'' includes an agency or instrumentality of the federal government providing education for kindergarten, grades 1 to 12, inclusive, or any part thereof, at any location within this state, including an Indian reservation or a military installation located within the geographical borders of this state, where a credentialed teacher is employed by the federal government or an agency or instrumentality thereof. ''Qualifying educational institution''

includes any elementary, secondary, or vocational-technical school located in California, that files an affidavit pursuant to Sections 33190 and 33191 of the Education Code, and provides education for kindergarten and grades 1 to 12, inclusive, or any part thereof.

(3) ''Wages and salaries for services as a credentialed teacher'' includes only those amounts received with respect to services performed as a credentialed teacher, but does not include pensions or other deferred compensation.

(4) ''Total tax'' means the tax imposed under this part for the taxable year, before the application under Section 19007 of any payment of estimated tax or any installment thereof, less all credits allowed for the taxable year except for the following:

(A) The credit allowed under this section.

(B) The credit allowed under Section 17061 (relating to refunds under the Unemployment Insurance Code).

(C) The credit allowed under Section 19002 (relating to tax withholding).

(D) Any refundable credit that is allowed under this part.

SEC. 8. Section 17053.30 of the Revenue and Taxation Code is amended to read:

17053.30. (a) There shall be allowed as a credit against the ''net tax,'' as defined in Section 17039, an amount equal to 55 percent of the fair market value of any qualified contribution made on or after January 1, 2000, and not later than June 30, 2008, by the taxpayer during the taxable year to the state, any local government, or any designated nonprofit organization, pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(b) For purposes of this section, ''qualified contribution'' means a contribution of property, as defined in Section 37002 of the Public Resources Code, that has been approved for acceptance by the Wildlife Conservation Board pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(c) In the case of any passthrough entity, the fair market value of any qualified contribution approved for acceptance under Division 28 (commencing with Section 37000) of the Public Resources Code shall be passed through to the partners or shareholders of the passthrough entity in accordance with their interest in the passthrough entity as of the date of the qualified contribution. For purposes of this subdivision, the term ''passthrough entity'' means any partnership, ''S'' corporation, or limited liability company treated as a partnership.

(d) If the credit allowed by this section exceeds the ''net tax,'' the excess may be carried over to reduce the ''net tax'' in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(e) This credit shall be in lieu of any other credit or deduction which the taxpayer may otherwise claim pursuant to this part with respect to the property or any interest therein that is contributed.

SEC. 9. Section 19164 of the Revenue and Taxation Code is amended to read:

19164. (a) (1) (A) 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.

(B) (i) Except for understatements relating to tax shelter items to which paragraph (5) applies, in the case of any proposed deficiency assessment issued after the last date of the amnesty period specified in Chapter 9.1 (commencing with Section 19730) for any taxable year beginning prior to January 1, 2003, the penalty specified in Section 6662(a) of the Internal Revenue Code shall be computed by substituting ''40 percent'' for ''20 percent.''

(ii) Clause (i) shall not apply to any taxable year of a taxpayer beginning prior to January 1, 2003, if, as of the start date of the amnesty program period specified in Section 19731, the taxpayer is then under audit by the Franchise Tax Board, or the taxpayer has filed a protest under Section 19041, or the taxpayer has filed an appeal under Section 19045, or the taxpayer is engaged in settlement negotiations under Section 19442, or the taxpayer has a pending judicial proceeding in any court of this state or in any federal court relating to the tax liability of the taxpayer for that taxable year.

(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)).

(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 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 Section 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. 10. Article 4 (commencing with Section 19590) is added to Chapter 7 of Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

Article 4. Tax Service Fees

19590. The Legislature finds and declares all of the following:

(a) In addition to standard services that the Franchise Tax Board provides to all taxpayers and the public, the board also, upon request, provides specialized taxpayer services to individuals and entities.

(b) The provision of specialized taxpayer services imposes additional costs on the agency which are borne by all taxpayers.

(c) The full cost of administering specialized taxpayer services should be paid by the individual or entity that requests and receives the specialized taxpayer services, rather than by all taxpayers.

(d) Establishing a specialized service fee is the most efficient and convenient way to recover the full costs of administering and providing specialized taxpayer services.

(e) The amount of the specialized service fee imposed on an individual or an entity pursuant to this article shall be reasonably related to the actual costs incurred by the board to provide the specialized taxpayer service.

(f) The revenues derived from the fees imposed pursuant to this article are not the proceeds of taxes within the meaning Section 3 of Article XIII A of the California Constitution.

19591. (a) Specialized tax services fees shall be imposed upon the following services provided by the board:

(1) Installment payment programs.

(2) Expedited services for:

(A) Corporation revivor requests.

(B) Tax clearance certificate requests.

(C) Tax-exempt status requests.

(b) (1) For periods on or after the effective date of this section and prior to January 1, 2006, the Franchise Tax Board shall publish by notice a schedule of specialized tax services fees to be imposed, which notice shall be exempt from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The amounts of these fees under this paragraph shall be calculated in the same general manner as required under paragraph (2).

(2) Commencing on January 1, 2006, the amount of the specialized tax services fees shall be established by the board through regulations adopted pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be established in the manner and in the amounts necessary to reimburse the board for the costs of administering the specialized services, including the board's direct and indirect costs for providing specialized tax services.

19592. All fees received by the Franchise Tax Board under this article shall be treated as reimbursement for the board's costs.

SEC. 11. Chapter 9.1 (commencing with Section 19730) is added to Part 10.2 of Division 2 of the Revenue and Taxation Code, to read:

CHAPTER 9.1. TAX AMNESTY

19730. The Franchise Tax Board shall administer a tax amnesty program for taxpayers subject to Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001), as provided in this chapter.

19731. The tax amnesty program shall be conducted during a two-month period beginning February 1, 2005, and ending March 31, 2005, inclusive, or during a timeframe ending no later than June 30, 2005, pursuant to Section 19733. The program shall apply to tax liabilities for taxable years beginning before January 1, 2003.

19732. (a) For any taxpayer who meets each of the requirements of Section 19733, subject to the conditions set forth in Section 19737:

(1) The Franchise Tax Board shall waive all unpaid penalties and fees imposed by this part for each taxable year for which tax amnesty is allowed, but only to the extent of the amount of any penalty or fee that is owed as a result of previous nonreporting or underreporting of tax liabilities or prior nonpayment of any taxes previously assessed or proposed to be assessed for that taxable year.

(2) Except as provided in subdivision (b), no criminal action shall be brought against the taxpayer for the taxable years for which tax amnesty is allowed for the nonreporting or underreporting of tax liabilities or the nonpayment of any taxes previously assessed or proposed to be assessed.

(b) This chapter shall not apply to violations of this part, for which, as of February 1, 2005, any of the following applies:

(1) The taxpayer is on notice of a criminal investigation by a complaint having been filed against the taxpayer.

(2) The taxpayer is under criminal investigation.

(3) A court proceeding has already been initiated.

(c) This section shall not apply to any nonreported or underreported tax liability amounts attributable to tax shelter items that could have been reported under either the voluntary compliance initiative under Chapter 9.5 (commencing with Section 19751) or the Internal Revenue Service's Offshore Voluntary Compliance Initiative described in Revenue Procedure 2003–11.

(d) No refund or credit shall be granted with respect to any penalty or fee paid with respect to a taxable year prior to the time the taxpayer makes a request for tax amnesty for that taxable year pursuant to Section 19733.

(e) Notwithstanding Chapter 6 (commencing with Section 19301), a taxpayer may not file a claim for refund or credit for any amounts paid in connection with the tax amnesty program under this chapter.

19733. (a) This chapter shall apply to any taxpayer who, during the tax amnesty program period specified in Section 19731:

(1) Is eligible to participate in the tax amnesty program.

(2) Files a completed amnesty application with the Franchise Tax Board, signed under penalty of perjury, electing to participate in the tax amnesty program.

(3) Within 60 days after the conclusion of the tax amnesty period, does the following:

(A) (i) For any taxable year eligible for the tax amnesty program where the taxpayer has not filed any required return, files a completed original tax return for that year, or

(ii) For any taxable year eligible for the tax amnesty program where the taxpayer filed a return but underreported tax liability on that return, files an amended return for that year.

(B) Pays in full any taxes and interest due for each taxable year described in clauses (i) and (ii) of subparagraph (A), as applicable, for which amnesty is requested, or applies for an installment payment agreement under subdivision (b). For taxpayers who have not paid in full any taxes previously proposed to be assessed, pays in full the taxes and interest due for that portion of the proposed assessment for each taxable year for which amnesty is requested or applies for an installment payment agreement under subdivision (b).

(4) For purposes of complying with the full payment provisions of paragraph (3) of subdivision (a), if the full amount due is paid within the period set forth in paragraph (3) of subdivision (c) of Section 19101 after the date the Franchise Tax Board mails a notice resulting from the filing of an amnesty application or the full amount is paid within 60 days after the conclusion of the tax amnesty period, the full amount due shall be treated as paid during the amnesty period.

(5) In the case of any taxpayer that has filed for bankruptcy protection under Title 11 of the United States Code, submits an order from a Federal Bankruptcy Court allowing the taxpayer to participate in the amnesty program.

(b) (1) For purposes of complying with the full payment provisions of subparagraph (B) of paragraph (3) of subdivision (a), the Franchise Tax Board may enter into an installment payment agreement, but only if final payment under the terms of that installment payment agreement is due and is paid no later than June 30, 2006.

(2) Any installment payment agreement authorized by this subdivision shall include interest on the outstanding amount due at the rate prescribed in Section 19521.

(3) Failure by the taxpayer to fully comply with the terms of an installment payment agreement under this subdivision shall render the waiver of penalties and fees under Section 19732 null and void, unless the Franchise Tax Board determines that the failure was due to reasonable cause and not due to willful neglect.

(4) In the case of any failure described under paragraph (3), the total amount of tax, interest, fees, and all penalties shall become immediately due and payable.

(c) (1) The application required under paragraph (2) of subdivision (a) shall be in the form and manner specified by the Franchise Tax Board, but in no case shall a mere payment of any taxes and interest due, in whole or in part, for any taxable year otherwise eligible for amnesty under this part, be deemed to constitute an acceptable amnesty application under this part. For purposes of the prior sentence, the application of a refund from one taxable year to offset a tax liability from another taxable year otherwise eligible for amnesty shall not, without the filing of an amnesty application, be deemed to constitute an acceptable amnesty application under this part.

(2) The Legislature specifically intends that the Franchise Tax Board, in administering the amnesty application requirement under this part, make the amnesty application process as streamlined as possible to ensure participation in the amnesty program will be available to as many taxpayers as possible without otherwise compromising the Franchise Tax Board's ability to enforce and collect the taxes imposed under Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(d) Upon the conclusion of the tax amnesty program period, the Franchise Tax Board may propose a deficiency upon any return filed pursuant to subparagraph (A) of paragraph (3) of subdivision (a), impose penalties and fees, 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 previously granted under Section 19732.

(e) All revenues derived pursuant to subdivision (c) shall be subject to Sections 19602 and 19604.

19734. Notwithstanding any other provision of this chapter, if any overpayment of tax shown on an original or amended return filed under this article is refunded or credited within 180 days after the return is filed, no interest shall be allowed under Section 19340 on that overpayment.

19735. (a) The Franchise Tax Board may issue forms, instructions, notices, rules, or guidelines, and take any other necessary actions, needed to implement this chapter, specifically including any forms, instructions, notices, rules, or guidelines that specify the form and

manner of any acceptable form of amnesty application described in Section 19733.

(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 standard, criterion, procedure, determination, rule, notice, or guideline established or issued by the Franchise Tax Board pursuant to this chapter.

19736. (a) The Franchise Tax Board shall conduct a public outreach program and adequately publicize the tax amnesty program so as to maximize public awareness and to make taxpayers aware of the program. In addition, the Franchise Tax Board shall make taxpayers aware of the new and increased penalties associated with taxpayer failure to participate in the tax amnesty program.

(b) The Franchise Tax Board shall make reasonable efforts to identify taxpayer liabilities and, to the extent practicable, will send written notice to taxpayers of their eligibility for the tax amnesty program. However, failure of the Franchise Tax Board to notify a taxpayer of the existence or correct amount of a tax liability eligible for amnesty shall not preclude the taxpayer from participating in the tax amnesty program, nor shall such failure be grounds for abating the penalty imposed under Section 19777.5.

19737. (a) In the case of any taxpayer who participates in the tax amnesty program under this chapter, receives a waiver of all penalties and fees, and subsequently fails to pay any amount of tax (including penalties, fees and other amounts) for the 2005 or 2006 taxable year, which failure results in the imposition of a collection cost recovery fee under Section 19254, then the previous waiver of the penalties and fees under the tax amnesty program shall be rendered null and void, and all penalties, fees, and associated interest shall be immediately due and payable.

(b) Article 3 (commencing with Section 19031), relating to deficiency assessments, shall not apply with respect to the assessment or collection of any penalty, fee, or interest imposed pursuant to subdivision (a).

(c) Notwithstanding Chapter 6 (commencing with Section 19301), a taxpayer may not file a claim for refund or credit for any amounts paid in connection with any penalty, fee, or interest imposed pursuant to subdivision (a).

19738. Any taxpayer who has an existing installment payment agreement under Section 19008 as of the start of the amnesty program, and who does not participate in the amnesty program, may not be subject to the penalty imposed under Section 19777.5.

SEC. 12. Section 19777.5 is added to the Revenue and Taxation Code, to read:

19777.5. (a) There shall be added to the tax for each taxable year for which amnesty could have been requested:

(1) For amounts that are due and payable on the last day of the amnesty period, an amount equal to 50 percent of the accrued 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 last day of the amnesty period specified in Section 19731.

(2) For amounts that become due and payable after the last date of the amnesty period, an amount equal to 50 percent of the interest computed under Section 19101 on any final amount, including final deficiencies and self-assessed amounts, for the period beginning on the last date prescribed by law for the payment of the tax for the year of the deficiency (determined without regard to extensions) and ending on the last day of the amnesty period specified in Section 19731.

(b) 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 23001), or this part.

(c) This section does not apply to any amounts that are treated as paid during the amnesty program period under paragraph (4) of subdivision (a) of Section 19733 or paragraph (1) of subdivision (b) of Section 19733.

(d) Article 3 (commencing with Section 19031), (relating to deficiency assessments) shall not apply with respect to the assessment or collection of any penalty imposed by subdivision (a).

(e) Notwithstanding Chapter 6 (commencing with Section 19301), a taxpayer may not file a claim for refund or credit for any amounts paid in connection with the penalty imposed in subdivision (a).

SEC. 13. Section 23630 of the Revenue and Taxation Code is amended to read:

23630. (a) There shall be allowed as a credit against the ''tax,'' as defined in Section 23036, an amount equal to 55 percent of the fair market value of any qualified contribution made on or after January 1, 2000, and not later than June 30, 2008, by the taxpayer during the taxable year to the state, any local government, or any designated nonprofit organization, pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(b) For purposes of this section, ''qualified contribution'' means a contribution of property, as defined in Section 37002 of the Public Resources Code, that has been approved for acceptance by the Wildlife Conservation Board pursuant to Division 28 (commencing with Section 37000) of the Public Resources Code.

(c) In the case of any passthrough entity, the fair market value of any qualified contribution approved for acceptance under Division 28

(commencing with Section 37000) of the Public Resources Code shall be passed through to the partners or shareholders of the passthrough entity in accordance with their interest in the passthrough entity as of the date of the qualified contribution. For purposes of this subdivision, the term ''passthrough entity'' means any partnership or ''S'' corporation.

(d) If the credit allowed by this section exceeds the ''tax,'' the excess may be carried over to reduce the ''tax'' in the following year, and the succeeding seven years if necessary, until the credit is exhausted.

(e) This credit shall be in lieu of any other credit or deduction that the taxpayer may otherwise claim pursuant to this part with respect to the property or any interest therein that is contributed.

SEC. 14. 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 alleviate the current fiscal crisis, it is necessary that this act go into immediate effect.

CHAPTER 227

An act to amend Sections 352, 18800, 23095, and 25658.1 of the Business and Professions Code, to add and repeal Section 3294.5 of the Civil Code, to amend Sections 215, 405.20, 405.22, 1021.8, and 1502 of the Code of Civil Procedure, to amend Section 1502.5 of the Corporations Code, to add Article 20.5 (commencing with Section 69999.6) to Chapter 2 of Part 42 of the Education Code, to amend Sections 10404.5 and 10405.7 of the Elections Code, to add Section 221.1 to the Food and Agricultural Code, to amend Sections 905.2, 910.4, 910.8, 911, 11011, 11011.1, 11011.2, 11011.3, 11011.4, 11011.5, 11011.6, 11011.8, 11011.9, 11794, 12012.90, 12152, 12439, 12715, 13332.11, 13332.19, 13923, 14612.2, 14661, 15201, 16182, 16320, 16351, 16427, 23344, 27297.5, 29550, 30070, 63021.5, 65583, 69926.5, 69957, 71601, 71630, 71636, 71639.3, 71823, and 77202 of, to amend and repeal Section 29550.4 of, to add Sections 14604, 65584.1, 65584.2, 68511.8, 69958, 71639.4, 71639.5, 71825.1, and 71825.2 to, to add and repeal Sections 8690.6, 11011.10, and 12432 of, to repeal Sections 11006 and 13332.04 of, and to repeal and add Sections 71639.1 and 71825 of, the Government Code, to amend Sections 50710.1 and 53533 of, and to add Section 13138 to, the Health and Safety Code, to amend Section 2065 of the Labor Code, to amend Sections 4750, 4751, 4752, 4753, and 6005 of, and to add Sections 4751.5, 4753.5, and 5023.5 to, the Penal Code, to add Section 10108.8 to the Public Contract Code,

to amend Sections 25630 and 26020 of, and to add Section 25226 to, the Public Resources Code, to add Section 884.5 to the Public Utilities Code, to amend Sections 63.1, 2514, 8352, and 30462 of the Revenue and Taxation Code, to amend Section 1587 of the Unemployment Insurance Code, to amend Section 21401 of, and to repeal Section 42272, of the Vehicle Code, to amend Section 3 of Chapter 899 of the Statutes of 1995, and to amend Section 30 of Chapter 573 of the Statutes of 2003, relating to state government, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 352 of the Business and Professions Code is amended to read:

352. (a) Subject to subdivision (b), the department shall commence activities under this article no later than January 1, 2002.

(b) The provisions of this article shall only be operative for those years in which there is an appropriation from the General Fund in the Budget Act to fund the activities required by this article.

(c) Funding sources other than the General Fund may be used to support this activity.

SEC. 3. Section 18800 of the Business and Professions Code is amended to read:

18800. As of July 1, 2004, all moneys received by the commission under this chapter shall be accounted for and reported by detailed statements furnished by the commission to the Controller at least once a month. At the same time, these moneys, other than those that have been received by the commission pursuant to Section 18882, shall be remitted to the Treasurer and shall be deposited in the Athletic Commission Fund, which is hereby created.

SEC. 7. Section 23095 of the Business and Professions Code is amended to read:

23095. (a) Whenever a decision of the department suspending a license becomes final, whether by failure of the licensee to appeal the decision or by exhaustion of all appeals and judicial review, the licensee may, before the operative date of the suspension, petition the department for permission to make an offer in compromise, to be paid into the Alcohol Beverage Control Fund, consisting of a sum of money in lieu of serving the suspension.

(b) No licensee may petition the department for an offer in compromise in any case in which the proposed suspension is for a period in excess of 15 days.

(c) Upon the receipt of the petition, the department may stay the proposed suspension and cause any investigation to be made which it deems desirable and may grant the petition if it is satisfied that the following conditions are met:

(1) The public welfare and morals would not be impaired by permitting the licensee to operate during the period set for suspension and the payment of the sum of money will achieve the desired disciplinary purposes.

(2) The books and records of the licensee are kept in such a manner that the loss of sales of alcoholic beverages that the licensee would have suffered had the suspension gone into effect can be determined with reasonable accuracy therefrom.

(d) The offer in compromise for retail licensees shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of a proposed suspension, subject to the following limits:

(1) The offer in compromise may not be less than seven hundred fifty dollars ($750) nor more than three thousand dollars ($3,000).

(2) If the petitioning retailer has had any other accusation filed against him or her by the department during the three years prior to the date of the petition that has resulted in a final decision to suspend or revoke the retail license concerned, the offer in compromise may be not less than one thousand five hundred dollars ($1,500) nor more than six thousand dollars ($6,000).

(e) Notwithstanding subdivision (b), a licensee may petition the department for an offer in compromise for a second violation of Section 25658 that occurs within 36 months of the initial violation without regard to the period of suspension. In these cases, the offer in compromise shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise may be not less than two thousand five hundred dollars ($2,500) nor more than twenty thousand dollars ($20,000).

(f) (1) The offer in compromise for nonretail licensees shall be the equivalent of 50 percent of the estimated gross sales of alcoholic beverages for each day of the proposed suspension, and the offer in compromise may not be less than seven hundred fifty dollars ($750) and may not exceed ten thousand dollars ($10,000) unless the nonretail licensee has violated Section 25500, 25502, 25503, or 25600 by giving to any licensee illegal inducements, secret rebates, or free goods amounting to more than ten thousand dollars ($10,000) in value, in which case the offer in compromise shall be equal to the value of the illegal inducements, secret rebates, or free goods given.

(2) Notwithstanding paragraph (1), any nonretail licensee who pays an offer in compromise based upon a violation in the exercise of any

retail privileges of that license shall have the offer in compromise computed on estimated retail gross sales only pursuant to subdivision (d).

(3) All moneys collected as a result of penalties imposed under this subdivision shall be deposited directly in the General Fund in the State Treasury, rather than the Alcohol Beverage Control Fund as provided for in Section 25761.

SEC. 8. Section 25658.1 of the Business and Professions Code is amended to read:

25658.1. (a) Notwithstanding any other provision of this division, no licensee may petition the department for an offer in compromise pursuant to Section 23095 for a third or any subsequent violation of Section 25658 that occurs within 36 months of the initial violation.

(b) Notwithstanding Section 24200, the department may revoke a license for a third violation of Section 25658 that occurs within any 36-month period. This provision shall not be construed to limit the department's authority and discretion to revoke a license prior to a third violation when the circumstances warrant that penalty.

(c) For purposes of this section, no violation may be considered for purposes of determination of the penalty until it has become final.

SEC. 8.5. Section 3294.5 is added to the Civil Code, to read:

3294.5. (a) The Legislature finds and declares that extraordinary and dire budgetary needs have forced the enactment of this extraordinary measure to allocate temporarily for the state's Public Benefit Trust Fund a substantial portion of any punitive damages paid from a judgment during the limited time period specified in the statute. The Legislature further finds and declares that this uniquely extraordinary legislative action shall not be construed or interpreted in any way to establish any policy, precedent, presumption, or inference in any case or in any other setting, including future legislatures, regarding the award of punitive damages, its allocation, or the payment of attorney's fees arising in connection therewith.

(b) Punitive damages awarded pursuant to a final judgment shall be paid, as follows:

(1) Seventy-five percent shall be paid to the Public Benefit Trust Fund, which is hereby created in the State Treasury, to be administered by the Department of Finance. Amounts deposited into the Public Benefit Trust Fund shall be available for annual appropriation in the Budget Act and shall be used for purposes consisted with the nature of the award, but in no case shall be used to fund the courts or judicial programs. Amounts deposited in the Public Benefit Trust Fund shall also be available for the purposes specified in subdivision (d).

(2) Twenty-five percent to the plaintiff or plaintiffs.

(c) Upon a final judgment that includes punitive damages, after payment of costs if any, to the plaintiff, the judgment debtor shall do all of the following:

(1) Pay the Public Benefit Trust Fund's proportional share of the punitive damages to the Director of the Department of Finance for deposit in the Public Benefit Trust Fund.

(2) Pay to the plaintiff's attorney, the plaintiff's proportional share of punitive damages.

(3) Notify the plaintiff's attorney of the amount of punitive damages paid to the Public Benefit Trust Fund.

(d) Upon deposit in the Public Benefit Trust Fund of proceeds from a final judgment punitive damages award, the plaintiff's attorney in the action giving rise to those proceeds shall be entitled to 25 percent of the proceeds received by the fund from the punitive damages award in that action. Notwithstanding Section 13340 of the Government Code, the plaintiff's attorney's share of the proceeds shall be continuously appropriated to pay those attorney's fees, provided that any claim for payment by the plaintiff's attorney shall be paid by the fund on July 1 of the next fiscal year.

(e) The state shall not be a party in interest to, and shall not intervene in, any action in which its sole interest is the potential recovery of a portion of a punitive damages award under this section. The state shall not file any amicus curiae brief regarding the propriety of, or the amount of, any punitive damages award in any action in which its sole interest is the potential recovery of a portion of a punitive damages award under this section. The state's sole right to the proceeds of a punitive damages award is as provided in this section.

(f) Notwithstanding any other provision of law, any attorney's fees paid to an attorney from the plaintiff's share of the award shall be deemed to be the income of the attorney and not income to the plaintiff for state and local taxation purposes.

(g) A jury shall not be informed that any portion of a punitive damages award will be paid to a government fund, and no argument or inference shall be made to a jury that a punitive damages award would result in a windfall to the plaintiff or plaintiffs. However, nothing in this section shall be construed to affect a punitive damages award if a juror or jurors had independent knowledge that a portion of a punitive damages award will be paid to a government fund.

(h) This section shall only apply to actions filed after the effective date of this section and finally adjudicated, including the resolution of all mandatory or discretionary appeals, the resolution of any motion for attorney's fees on appeal and any appeals therefrom, and the issue of final remittitur, prior to the date this section ceases to be operative.

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

SEC. 9. Section 215 of the Code of Civil Procedure is amended to read:

215. (a) Except as provided in subdivision (b), on and after July 1, 2000, the fee for jurors in the superior court, in civil and criminal cases, is fifteen dollars ($15) a day for each day's attendance as a juror after the first day.

(b) A juror who is employed by a federal, state, or local government entity, or by any other public entity as defined in Section 481.200, and who receives regular compensation and benefits while performing jury service, may not be paid the fee described in subdivision (a).

(c) All jurors in the superior court, in civil and criminal cases, shall be reimbursed for mileage at the rate of thirty-four cents ($0.34) per mile for each mile actually traveled in attending court as a juror after the first day, in going only.

SEC. 10. Section 405.20 of the Code of Civil Procedure is amended to read:

405.20. A party to an action who asserts a real property claim may record a notice of pendency of action in which that real property claim is alleged. The notice may be recorded in the office of the recorder of each county in which all or part of the real property is situated. The notice shall contain the names of all parties to the action and a description of the property affected by the action.

SEC. 11. Section 405.22 of the Code of Civil Procedure is amended to read:

405.22. Except in actions subject to Section 405.6, the claimant shall, prior to recordation of the notice, cause a copy of the notice to be mailed, by registered or certified mail, return receipt requested, to all known addresses of the parties to whom the real property claim is adverse and to all owners of record of the real property affected by the real property claim as shown by the latest county assessment roll. If there is no known address for service on an adverse party or owner, then as to that party or owner a declaration under penalty of perjury to that effect may be recorded instead of the proof of service required above, and the service on that party or owner shall not be required. Immediately following recordation, a copy of the notice shall also be filed with the court in which the action is pending. Service shall also be made immediately and in the same manner upon each adverse party later joined in the action.

SEC. 12. Section 1021.8 of the Code of Civil Procedure is amended to read:

1021.8. (a) Whenever the Attorney General prevails in a civil action to enforce Section 17537.3, 22445, 22446.5, 22958, 22962, or

22963 of the Business and Professions Code, Section 52, 52.1, 55.1, or 3494 of the Civil Code, the Corporate Securities Law of 1968 (Division 1 (commencing with Section 25000) of Title 4 of the Corporations Code or the California Commodity Law of 1990 (Division 4.5 (commencing with Section 29500) of Title 4 of the Corporations Code), Section 1615, 2014, or 5650.1 of the Fish and Game Code, Section 4458, 12606, 12607, 12598, 12989.3, 16147, 66640, 66641, or 66641.7 of the Government Code, Section 13009, 13009.1, 19958.5, 25299, 39674, 41513, 42402, 42402.1, 42402.2, 42402.3, 42402.4, 43016, 43017, 43154, 104557, or 118950 of the Health and Safety Code, Section 308.1 or 308.3 of the Penal Code, Section 2774.1, 4601.1, 4603, 4605, 30820, 30821.6, or 30822 of the Public Resources Code, Section 30101.7 of the Revenue and Taxation Code, or Section 275, 1052, 1845, 13261, 13262, 13264, 13265, 13268, 13304, 13331, 13350, 13385, 42847, or 48023 of the Water Code, the court shall award to the Attorney General all costs of investigating and prosecuting the action, including expert fees, reasonable attorney's fees, and costs. Awards under this section shall be paid to the Public Rights Law Enforcement Special Fund established by Section 12530 of the Government Code.

(b) This section applies to any action pending on the effective date of this section and to any actions filed thereafter.

(c) The amendments made to this section by the act adding this subdivision shall apply to any action pending on the effective date of these amendments and to any actions filed thereafter.

SEC. 13. Section 1502 of the Code of Civil Procedure is amended to read:

1502. (a) This chapter does not apply to either of the following:

(1) Any property in the official custody of a municipal utility district.

(2) Any property in the official custody of a local agency if such property may be transferred to the general fund of such agency under the provisions of Sections 50050-50053 of the Government Code.

(b) None of the provisions of this chapter applies to any type of property received by the state under the provisions of Chapter 1 (commencing with Section 1300) to Chapter 6 (commencing with Section 1440), inclusive, of this title.

SEC. 14. Section 1502.5 of the Corporations Code is amended to read:

1502.5. The Victims of Corporate Fraud Compensation Fund is hereby established in the State Treasury. The fund shall be administered by the Secretary of State who shall adopt regulations regarding the administration of the fund and the eligibility of victims to receive compensation from the fund. The money in the fund shall be used for the sole purpose of providing restitution to the victims of a corporate fraud. Notwithstanding Section 13340 of the Government Code, the money in

the fund is continuously appropriated to the Secretary of State for the purposes authorized by this section.

SEC. 15. Article 20.5 (commencing with Section 69999.6) is added to Chapter 2 of Part 42 of the Education Code, to read:

Article 20.5. Management and Disbursement of Funds Previously Set Aside for Repealed Governor's Scholarship Programs

69999.6. (a) In enacting this article, it is the intent of the Legislature to accomplish both of the following:

(1) Provide explicit authority to the board to continue to administer accounts for, and make awards to, persons who qualified for awards under the provisions of the Governor's Scholarship Programs as those provisions existed on January 1, 2003, prior to the repeal of former Article 20 (commencing with Section 69995).

(2) Provide for the management and disbursement of funds previously set aside for the scholarship programs authorized by former Article 20 (commencing with Section 69995).

(b) The board may manage and disburse the funds previously set aside for the scholarship programs authorized by former Article 20 (commencing with Section 69995).

(c) If a person has earned an award under the Governor's Scholarship Programs on or before January 1, 2003, but has not claimed the award on or before June 30, 2004, he or she still may claim the award by a date that is five years from the first June 30 that fell after he or she took the qualifying test. An award shall not be made by the Scholarshare Investment Board after that date.

(d) The board may adopt rules and regulations for the implementation of this article.

69999.7. (a) Notwithstanding any other provision of law, not later than 30 days after enactment of the Budget Act of 2004, the Scholarshare Investment Board shall transfer from the Golden State Scholarshare Trust to the General Fund the lesser of (1) fifty million dollars ($50,000,000) or (2) the balance resulting from unclaimed awards in the Golden State Scholarshare Trust that exceeds five million dollars ($5,000,000) as of the close of business on the business day preceding the transfer.

(b) The amount remaining in the Golden State Scholarshare Trust after the transfer required by subdivision (a) shall be available as a reserve for funding claims for these awards. If claims for these awards exceed four million dollars ($4,000,000) of the reserve established by this act in the Golden State Scholarshare Trust, the Scholarshare Investment Board shall notify the Controller of the amount of any shortfall of funds for the payment of claims, and the Controller shall

transfer an amount of money equal to the shortfall from the General Fund to the Golden State Scholarshare Trust.

69999.8. As used in this article:

(a) ''Board'' means the Scholarshare Investment Board established pursuant to subparagraph (B) of paragraph (2) of subdivision (a) of Section 69984.

(b) ''Former Article 20'' means former Article 20 (commencing with Section 69995) of Chapter 2 of Part 42 of the Education Code, as it read on January 1, 2003.

SEC. 16. Section 10404.5 of the Elections Code is amended to read:

10404.5. (a) A resolution of the governing board of a school district or county board of education to establish an election day pursuant to subdivision (b) of Section 1302 shall be adopted and submitted to the board of supervisors not later than 240 days prior to the date of the currently scheduled election of the district or for the members of the county board of education.

(b) The final date for the submission of the resolution by the governing board of a school district or county board of education to the board of supervisors is not subject to waiver.

(c) The board of supervisors shall notify all school districts and the county board of education located in the county of the receipt of the resolution to consolidate and shall request input from each district on the effect of consolidation.

(d) (1) The board of supervisors, within 60 days from the date of submission, shall approve the resolution unless it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled. Prior to the adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors may obtain from the elections official a report on the cost-effectiveness of the proposed action.

(2) Public notices of the proceedings in which the resolution is to be considered for adoption shall be made pursuant to Section 25151 of the Government Code.

(e) Within 30 days after the approval of the resolution by the board of supervisors, the elections official shall notify all registered voters of the districts affected by the consolidation of the approval of the resolution by the board of supervisors. The notice shall be delivered by mail and at the expense of the school district or if applicable, the county board of education.

(f) An election day established pursuant to subdivision (b) of Section 1302 shall be prescribed to occur not less than one month, nor more than 12 months, subsequent to the election day prescribed in Section 5000 of the Education Code or pursuant to Section 1007 of the Education Code, as appropriate. As used in this subdivision, ''12 months'' means the

period from the election day prescribed in Section 5000 of the Education Code or pursuant to Section 1007 of the Education Code, as appropriate, to the first Tuesday after the first Monday in the 12th month subsequent to that day, inclusive.

(g) In the event that the election day for a school district governing board or county board of education is established pursuant to subdivision (b) of Section 1302, the term of office of all then incumbent members of that governing board or county board of education shall be extended accordingly.

SEC. 17. Section 10405.7 of the Elections Code is amended to read:

10405.7. (a) The resolution of the community college district governing board to establish an election day pursuant to subdivision (b) of Section 1302 shall be adopted and submitted to the board of supervisors not later than 240 days prior to the date of the currently scheduled election for the governing board members of the community college district.

(b) The final date for the submission of the resolution by the community college district governing board to the board of supervisors is not subject to waiver.

(c) The board of supervisors shall notify all community college districts located in the county of the receipts of the resolution to consolidate and shall request input from each district on the effect of consolidation.

(d) (1) The board of supervisors, within 60 days from the date of submission, shall approve the resolution unless it finds that the ballot style, voting equipment, or computer capacity is such that additional elections or materials cannot be handled. Prior to the adoption of a resolution to either approve or deny a consolidation request, the board or boards of supervisors may each obtain from the elections official a report on the cost-effectiveness of the proposed action.

(2) Public notices of the proceedings in which the resolution is to be considered for adoption shall be made pursuant to Section 25151 of the Government Code.

(e) Within 30 days after the approval of the resolution by the board of supervisors, the elections official shall notify all registered voters of the districts affected by the consolidation of the approval of the resolution by the board of supervisors. The notice shall be delivered by mail and at the expense of the community college district.

(f) An election day established pursuant to subdivision (b) of Section 1302 shall be prescribed to occur not less than one month, nor more than 12 months, subsequent to the election day prescribed in Section 5000. As used in this subdivision, ''12 months'' means the period from the election day prescribed in Section 5000 of the Education Code to the first

Tuesday after the first Monday in the 12th month subsequent to that day, inclusive.

(g) If, pursuant to subdivision (b) of Section 1302, a district governing board member election is held on the same day as a statewide general election, those district governing board members whose four-year terms of office would have, prior to the adoption of the resolution, expired prior to that election shall, instead, continue in their offices until successors are elected and qualified.

SEC. 18. Section 221.1 is added to the Food and Agricultural Code, to read:

221.1. (a) Notwithstanding Section 221, the department shall establish all permanent positions with the Controller's office, pursuant to standard state administrative practices.

(b) The department shall report to the chairs of the fiscal committees of the Legislature and to the Legislative Analyst's office on or before January 10, 2005, on the positions established pursuant to subdivision (a) that have been funded by the department's general authority. The report shall include a description of the positions by program, classification, and source of funding, as well as a complete description of the workload for the positions.

SEC. 19. Section 905.2 of the Government Code is amended to read:

905.2. (a) There shall be presented in accordance with Chapter 1 (commencing with Section 900) and Chapter 2 (commencing with Section 910) of this part all claims for money or damages against the state:

(1) For which no appropriation has been made or for which no fund is available but the settlement of which has been provided for by statute or constitutional provision.

(2) For which the appropriation made or fund designated is exhausted.

(3) For money or damages on express contract, or for an injury for which the state is liable.

(4) For which settlement is not otherwise provided for by statute or constitutional provision.

(b) Claimants shall pay a filing fee of twenty-five dollars ($25) for filing a claim described in subdivision (a) with the Victim Compensation and Government Claims Board. This fee shall be deposited into the General Fund and may be appropriated in support of the board as reimbursements to Item 8700-001-0001 of the annual Budget Act.

(1) The fee shall not apply to persons who have applied for and been granted permission to proceed as litigants in forma pauperis in accordance with Section 68511.3 and applicable rules of court governing proceedings in forma pauperis.

(2) Upon approval of the claim by the Victim Compensation and Government Claims Board, the fee shall be reimbursed to the claimant. Reimbursement of the filing fee shall be paid by the state entity against which the approved claim was filed. The reimbursement shall be made at the time the claim is paid by the state entity, or shall be added to the amount appropriated for the claim in an equity claims bill.

(c) The board may assess a surcharge in an amount not to exceed 15 percent of the total approved claim. The board shall not include the refunded filing fee in the surcharge calculation. This surcharge shall be deposited into the General Fund and may be appropriated in support of the board as reimbursements to Item 8700-001-0001 of the annual Budget Act.

(d) The filing fee required by subdivision (a) shall apply to all claims filed after June 30, 2004, or the effective date of this statute. The surcharge authorized by subdivision (c) may be calculated and included in claims paid after June 30, 2004, or the effective date of the statute adding this subdivision.

SEC. 20. Section 910.4 of the Government Code is amended to read:

910.4. The board shall provide forms specifying the information to be contained in claims against the state. The person presenting a claim shall use the form in order that his or her claim is deemed in conformity with Sections 910 and 910.2. A claim may be returned to the person if it was not presented using the form. Any claim returned to a person may be resubmitted using the appropriate form.

SEC. 21. Section 910.8 of the Government Code is amended to read:

910.8. If in the opinion of the board or the person designated by it a claim as presented fails to comply substantially with the requirements of Sections 910 and 910.2, or with the requirements of a form provided under Section 910.4 if a claim is presented pursuant thereto, or if the claim is submitted without a filing fee when required pursuant to subdivision (b) of Section 905.2, the board or the person may, at any time within 20 days after the claim is presented, give written notice of its insufficiency, stating with particularity the defects or omissions therein. The notice shall be given in the manner prescribed by Section 915.4. The board may not take action on the claim for a period of 15 days after the notice is given.

SEC. 22. Section 911 of the Government Code is amended to read:

911. Any defense as to the sufficiency of the claim based upon a defect or omission in the claim as presented is waived by failure to give notice of insufficiency with respect to the defect or omission as provided in Section 910.8, except that no notice need be given and no waiver shall result when the claim as presented fails to state either an address to which the person presenting the claim desires notices to be sent or an address of the claimant, or fails to include the filing fee.

SEC. 23. Section 8690.6 is added to the Government Code, to read:

8690.6. (a) The Disaster Response-Emergency Operations Account is hereby established in the Special Fund for Economic Uncertainties. Notwithstanding Section 13340, moneys in the account are continuously appropriated, subject to the limitations specified in subdivisions (c) and (d), without regard to fiscal years, for allocation by the Director of Finance to state agencies for disaster response operation costs incurred by state agencies as a result of a proclamation by the Governor of a state of emergency, as defined in subdivision (b) of Section 8558. These allocations may be for activities that occur within 120 days after a proclamation of emergency by the Governor.

(b) It is the intent of the Legislature that the Disaster Response-Emergency Operations Account have an unencumbered balance of one million dollars ($1,000,000) at the beginning of each fiscal year. In the event that this account requires additional moneys to meet claims against the account, the Director of Finance may transfer moneys from the Special Fund for Economic Uncertainties to the account in an amount sufficient to pay the amount of the claims that exceed the unencumbered balance in the account.

(c) Funds shall be allocated from the account subject to the conditions of this section and upon notification by the Director of Finance to the chairperson of the Joint Legislative Budget Committee and the chairpersons of the fiscal committees in each house.

(d) Notwithstanding any other provision of law, authorizations for acquisitions, relocations, and environmental mitigations related to activities, as described in subdivision (a), shall be authorized pursuant to this section. However, these funds may only be authorized for needs that are a direct consequence of the proclaimed emergency where failure to undertake the project may interrupt essential state services or jeopardize public health or safety. In addition, any acquisition accomplished under this subdivision shall comply with any otherwise applicable law, except as provided in the first sentence of this subdivision.

(e) No funds allocated under this section shall be used to supplant federal funds otherwise available in the absence of state financial relief.

(f) The amount of financial assistance provided to an individual, business, or governmental entity under this section, or pursuant to any other program of state-funded disaster assistance, shall be deducted from sums received in payment of damage claims asserted against the state, its agents, or employees, for causing or contributing to the effects of the proclaimed disaster.

(g) No public entity administering disaster assistance to individuals shall receive funds under this section unless it administers that assistance pursuant to the following criteria:

(1) All applications, forms, and other written materials presented to persons seeking assistance shall be available in English and in the same language as that used by the major non-English-speaking group within the disaster area.

(2) Bilingual staff who reflect the demographics of the disaster area shall be available to applicants.

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

SEC. 24. Section 11006 of the Government Code is repealed.

SEC. 25. Section 11011 of the Government Code is amended to read:

11011. (a) On or before December 31st of each year, each state agency shall make a review of all proprietary state lands, other than tax-deeded land, land held for highway purposes, lands under the jurisdiction of the State Lands Commission, land that has escheated to the state or that has been distributed to the state by court decree in estates of deceased persons, and lands under the jurisdiction of the State Coastal Conservancy, over which it has jurisdiction to determine what, if any, land is in excess of its foreseeable needs and report thereon in writing to the Department of General Services. These lands shall include, but not be limited to, the following:

(1) Land not currently being utilized, or currently being underutilized, by the state agency for any existing or ongoing state program.

(2) Land for which the state agency has not identified any specific utilization relative to future programmatic needs.

(3) Land not identified by the state agency within its master plans for facility development.

(b) Jurisdiction of all land reported as excess shall be transferred to the Department of General Services, when requested by the director thereof, for sale or disposition under this section or as may be otherwise authorized by law.

(c) The Department of General Services shall report to the Legislature annually, the land declared excess and request authorization to dispose of the land by sale or otherwise.

(d) The Department of General Services shall review and consider reports submitted to the Director of General Services pursuant to Section 66907.12 of the Government Code and Section 31104.3 of the Public Resources Code prior to recommending or taking any action on surplus land, and shall also circulate the reports to all agencies that are required to report excess land pursuant to this section. In recommending or determining the disposition of surplus lands, the Director of General

Services may give priority to proposals by the state that involve the exchange of surplus lands for lands listed in those reports.

(e) Except as otherwise provided by any other provision of law, whenever any land is reported as excess pursuant to this section, the Department of General Services shall determine whether or not the use of the land is needed by any other state agency. If the Department of General Services determines that any land is needed by any other state agency it may transfer the jurisdiction of this land to the other state agency upon the terms and conditions as it may deem to be for the best interests of the state.

(f) When authority is granted for the sale or other disposition of lands declared excess, and the Department of General Services has determined that the use of the land is not needed by any other state agency, the Department of General Services shall sell the land or otherwise dispose of the same pursuant to the authorization, upon any terms and conditions and subject to any reservations and exceptions as the Department of General Services may deem to be for the best interests of the state. The Department of General Services shall report to the Legislature annually, with respect to each parcel of land authorized to be sold under this section, giving the following information:

(1) A description or other identification of the property.

(2) The date of authorization.

(3) With regard to each parcel sold after the next preceding report, the date of sale and price received, or the value of the land received in exchange.

(4) The present status of the property, if not sold or otherwise disposed of at the time of the report.

(g) Except as otherwise specified by law, moneys received from any property disposition, including the sale, lease, exchange, or other means, that is received pursuant to this section shall be paid into the General Fund.

For purposes of this section, net proceeds shall be defined as gross proceeds less all costs directly related to the completion of the transaction including, but not limited to, selling costs, transfer fees, commissions, and costs incurred by the Department of General Services.

(h) Any rentals or other revenues received by the department from real properties, the jurisdiction of which has been transferred to the Department of General Services under this section, shall be deposited in the General Fund in the account established by Section 15863. Any expenditures required to maintain, repair, care for, and sell this real property shall be paid from the appropriation made by Section 15863.

(i) Nothing contained in this section shall be construed to prohibit the sale, letting, or other disposition of any state lands pursuant to any law now or hereafter enacted authorizing the sale, letting, or disposition.

(j) This section shall be inoperative for the period commencing with the effective date of the act that added this subdivision, until July 1, 2005.

SEC. 26. Section 11011.1 of the Government Code is amended to read:

11011.1. (a) Land that has been declared surplus by the Legislature, pursuant to Section 11011, and is not needed by any state agency shall be offered to local governmental agencies. Except as authorized in subdivisions (b), (c), (d), (e), and (k), or any combination thereof, transfers of surplus land to local governmental agencies pursuant to this section shall be at fair market value. No surplus land shall be sold for less than fair market value, however, to any person or agency, whether public or private, unless the contract for sale provides for the reversion of the land to the state if the stated purpose for which the property is sold is not achieved.

(b) Where the land is to be used for park and recreation purposes and operated for those purposes by local agencies at no expense to the state, the Director of General Services with the approval of the State Public Works Board may, notwithstanding any provision in Section 11011, transfer the land to local governmental agencies at less than the fair market value of the land, if the transfer is in the public interest, under the following conditions:

(1) The local public agency has submitted a general development plan for the property that conforms to the agency's general plan pursuant to Article 5 (commencing with Section 65300) of Chapter 3 of Title 7, and which general development plan has been approved by the Director of Parks and Recreation.

(2) The land shall be developed according to plan within a time period determined by the state but not to exceed 10 years. The deed or other instrument of transfer shall provide that the land shall revert to the state if the land is not developed within the time period so determined by the state.

(3) The deed or other instrument of transfer shall provide that the land would revert to the state if the use changed to a use not consistent with parks and recreation purposes during the period of 25 years following the sale.

(c) Where the land is to be used for open-space purposes, as defined herein, and operated by local agencies at no expense to the state, the Director of General Services with the approval of the State Public Works Board may transfer the land to local governmental agencies at fair market value of the land or at any lesser value of the land under any of the following conditions:

(1) The local public agency has submitted a plan for the use of the property that conforms to the agency's general plan pursuant to Article

5 (commencing with Section 65300) of Chapter 3 of Title 7, and which plan has been approved by the Director of Parks and Recreation.

(2) The land shall be used according to plan within a time period determined by the state but not to exceed 10 years.

(3) The deed or other instrument of transfer shall provide that the land would revert to the state if the use changed to a use not consistent with open-space purposes during the period of 25 years following the sale.

(4) For the purpose of this subdivision, ''open-space purpose'' means the use of land for public recreation, enjoyment of scenic beauty, or conservation or use of natural resources.

(d) Where the land is suitable to be used for the purpose of providing housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, the Director of General Services, with the approval of the State Public Works Board, may offer the land to local agencies within whose jurisdiction the land is located. Provided, however, if the state has held title to the land for seven years or less and the land is not used for the purposes for which it was acquired, and the land is declared surplus land and is not needed by any other state agency pursuant to the provisions of Section 11011, the state, prior to offering the land to local agencies, shall extend to the individual from whom the land was acquired an offer to purchase the land at current fair market value. The offer shall extend for 60 days and if not exercised within that period shall be irrevocably terminated. The land may be transferred to local agencies at a reasonable cost that will enable the provision of housing for persons and families of low or moderate income. The cost may be less than fair market value. The Department of Housing and Community Development shall recommend to the Department of General Services a cost that will enable the provision of housing for persons and families of low or moderate income. All transfers of land pursuant to this subdivision shall be subject to the following conditions:

(1) The local agency has made all of the following findings:

(A) There is a need for the housing in the community.

(B) The land is suitable for development of the housing.

(2) The local agency develops a plan for the housing in accordance with criteria established by the Department of Housing and Community Development, which shall include, but not be limited to, criteria respecting the financial condition of the developer, if the housing is to be developed by a private sponsor, and the cost of the project. The plan shall be approved by the Department of Housing and Community Development.

(3) After transfer of the property from the state to the local agency, the property shall be developed as housing for persons and families of low or moderate income. The local agency may lease or sell the property to

any nonprofit corporation, housing corporation, limited dividend housing corporation, or private developer if the local agency determines a private entity is best suited to develop housing for persons and families of low or moderate income. In authorizing the private development, the local agency shall impose reasonable terms and conditions as will further the purposes of this subdivision, which shall include, but not be limited to, continued use of the property for housing for persons and families of low or moderate income for not less than 40 nor more than 55 years. A lessee or purchaser of land pursuant to this subdivision shall agree to limitations on profit in the operation of the property that will benefit the public and assure that the housing provided thereon is within the means of persons and families of low or moderate income. The agreement shall be binding upon successors in interest of the original lessee or purchaser and shall inure to the benefit of, and be enforceable by, the state.

(4) The local agency shall assure that the land will be used for the purpose of providing low- or moderate-income housing and shall not permit the use of the dwelling accommodations of the project for any other purpose for not less than 40 nor more than 55 years, except as provided in this section.

In the event a local agency does not comply with the land use requirements prescribed in this section, as determined by the Department of General Services, the Department of General Services may require that the local agency pay the state the difference between the actual price paid by the local agency for the property and the fair market value of the property, at the time of the department's determination of noncompliance, plus 6 percent interest on that amount for the period of time the land has been held by the local agency.

If the local agency, with the approval of the Department of General Services, and in consultation with the Department of Housing and Community Development, determines that there is no longer a need for low- or moderate-income housing within the jurisdiction of the local agency and another valid public purpose could be achieved by utilizing the land in an alternative manner, the local agency shall not be required to make any payment to the state for the difference between purchase price and fair market value or interest charges for the period of time the land has been held by the local agency.

(5) Failure to comply with the provisions of this section shall not invalidate the transfer, sale, or conveyance of the real property to a bona fide purchaser or encumbrancer for value.

(6) The project shall be commenced within 24 months of the original transfer to the local agency. However, the Department of General Services, in consultation with the Department of Housing and Community Development, may for justifiable cause extend the time for commencement of development for an additional 36 months. The

aggregate time for commencing development shall not exceed 60 months. The deed or other instrument of conveyance shall specify that, if development has not commenced within that time, the land shall revert to the Department of General Services for disposal pursuant to this section or as otherwise authorized by law.

(7) As used in this subdivision, ''local agency'' means and includes any county, city, city and county, redevelopment agency organized pursuant to Part 1 (commencing with Section 33000) of Division 24 of the Health and Safety Code, or housing authority organized pursuant to Part 2 (commencing with Section 34200) of Division 24 of the Health and Safety Code, public district or other political subdivision of the state and any instrumentality thereof, which is authorized to engage in or assist in the development or operation of housing for persons and families of low or moderate income and also includes two or more of those agencies acting jointly pursuant to Part 1 (commencing with Section 6500) of Division 7 of this code.

(8) Up to 40 percent of the housing developed on land purchased at below market value pursuant to this subdivision may be housing that is not regulated as to price, rent, or eligibility of occupants only if the purchaser of the land demonstrates that the proceeds from the sale or rental of that housing, in an amount equal to the difference between the fair market value and the actual price paid for the land, is used to reduce prices or rents on other housing units that are made available exclusively to persons and families of low and moderate income.

(e) Where the land is suitable to be used for the purpose of providing housing for persons and families of low or moderate income, as defined in Section 50093 of the Health and Safety Code, and provided no local agency has acquired or is in the process of acquiring the land pursuant to subdivision (d), the Director of General Services, with the approval of the State Public Works Board, may lease or sell the land to a housing sponsor. The land may be sold or leased at a reasonable cost that may be less than fair market value. The Department of Housing and Community Development shall recommend to the Director of General Services a cost that will enable the provision of housing for persons and families of low or moderate income. All transfers of land pursuant to this subdivision shall be subject to all of the following conditions:

(1) The housing sponsor has submitted a plan for the development of that housing pursuant to criteria established by the Department of Housing and Community Development. The criteria shall include, but need not be limited to, standards with respect to the cost of the housing development and the proportion of the housing development to be occupied by persons and families of low and moderate income. Insofar as is practical, the plan shall provide for a mix of housing for all income groups.

(2) The housing development shall normally be developed or be under development within 24 months from the time of transfer or lease of the land to the housing sponsor. However, the Department of General Services, in consultation with the Department of Housing and Community Development, may, upon finding justifiable cause, extend the time for commencement of development for an additional period of 36 months. The aggregate of all extensions for commencement of development shall not exceed 60 months. The deed or other instrument of conveyance shall specify that if development has not commenced within that time, the land shall revert to the Department of General Services for disposal pursuant to this section or as otherwise authorized by law.

(3) Transfer of title to the land or lease of the land to a housing sponsor shall be conditioned upon continued use of the property as housing for persons and families of low and moderate income for not less than 40 nor more than 55 years. In accordance with regulations that shall be adopted by the Department of Housing and Community Development pursuant to the Administrative Procedure Act, the Director of General Services shall require that any housing sponsor purchasing or leasing land pursuant to this subdivision enter into an agreement that (A) provides for limitations on profit in the operation of that property that benefit the public and which assure that the housing is affordable to persons and families of low and moderate income, and (B) does not permit the use of the property for purposes other than the provision of housing for persons and families of low and moderate income except as provided in this subdivision. Upon recordation of the agreement in the office of county recorder in the county in which the real property subject to the agreement is located, the agreement shall be binding for a period of not less than 40 nor more than 55 years upon successors in interest to the original housing sponsor and shall inure to the benefit of, and be enforceable by, the state.

For the purposes of this subdivision, ''housing sponsor'' means a nonprofit corporation incorporated pursuant to Part 1 (commencing with Section 9000) of Division 2 of Title 1 of the Corporations Code; a cooperative housing corporation which is a stock cooperative, as defined by Section 11003.2 of the Business and Professions Code; a limited-dividend housing corporation; or a private housing developer who agrees to the conditions set forth in this subdivision.

(4) Up to 40 percent of the housing developed on land purchased at below market value pursuant to this subdivision may be housing which is not regulated as to price, rent, or eligibility of occupants only if the purchaser of the land demonstrates that the proceeds from the sale or rental of that housing, in an amount equal to the difference between the fair market value and the actual price paid for the land, is used to reduce

prices or rents on other housing units which are made available exclusively to persons and families of low and moderate income.

(f) The Department of Housing and Community Development, in consultation with the Department of General Services and the Office of Planning and Research, shall make a report to the Legislature on or before January 1, 1981, with respect to effectiveness of the program and shall recommend any necessary legislative changes to the provisions of subdivision (d).

(g) Where the land is to be used for public purposes other than specifically set forth in this section, is to be operated by the local agency at no expense to the state, and the use and enjoyment of the public purpose contemplated will be of broad public benefit, and not a benefit basically of local interest enjoyed and used primarily by the residents of the area of tax jurisdiction of the local agency, the Director of General Services, with the approval of the State Public Works Board, may transfer the land to local governmental agencies at a sales price not less than 50 percent of fair market value. The transfer shall provide that if the land is not used for the contemplated purpose during the period of 25 years following the sale, the land shall revert to the state. The Director of General Services may provide additional terms and conditions which he or she determines to be in the best interest of the state.

(h) If there is more than one appropriate use and more than one offer for the use of a parcel of surplus land, the Department of General Services, in consultation with the Department of Housing and Community Development, the Department of Parks and Recreation, and the Office of Planning and Research, shall determine the most appropriate use for the parcel and the Department of General Services shall offer the land accordingly.

(i) Land that has been declared surplus by the Legislature, pursuant to Section 11011, is not needed by any state agency, is suitable for development for housing purposes, and is not in the process of being acquired pursuant to other provisions of this section, may upon the request of the Department of Housing and Community Development be retained by the Director of General Services for a period not exceeding five years, during which the Director of General Services shall continue to offer the lands for housing pursuant to subdivision (d).

(j) Transfer of state surplus lands under subdivision (d) shall be at a cost which will enable provision of economically feasible housing for persons and families of low or moderate income.

(k) Where the land is to be used for school purposes, the Director of General Services with the approval of the State Public Works Board and the State Allocation Board may, notwithstanding any provision in Section 11011, transfer the land to a local school district at less than fair

market value of the land, if the transfer is in the public interest, under the following conditions:

(1) The land is suitable for use by a school district as a school site, school administration building site, school warehouse site, or other school use approved by the State Department of Education.

(2) The land is used by the school district for those purposes before a nonuse fee is required by Section 39015 of the Education Code or a later time approved by the State Department of Education, with a reversion to the state if not so used within the time prescribed.

(3) The deed or other instrument of transfer shall provide that the land shall revert to the state if the use is changed to a use not consistent with school purposes during the period of 25 years following the sale.

(*l*) This section shall be inoperative for the period commencing with the effective date of the act that added this subdivision, until July 1, 2005.

SEC. 27. Section 11011.2 of the Government Code is amended to read:

11011.2. (a) Any state agency that owns real property requiring annual maintenance costing in excess of fifty thousand dollars ($50,000), and that declares that property to be surplus, shall provide for its maintenance for a period of one year from the date notification is made to the Department of General Services to request the Legislature to declare the property surplus, or until the property is sold. An agency may notify the Department of General Services to request the Legislature to declare property surplus while the property is still in use.

(b) This section shall be inoperative for the period commencing with the effective date of the act that added this subdivision, until July 1, 2005.

SEC. 28. Section 11011.3 of the Government Code is amended to read:

11011.3. (a) Any public agency desiring to purchase surplus state real property, as set forth in Section 11011.1, shall give written notice to the Department of General Services of its intent to purchase the real property within 60 days after receipt of the Department of General Services' written notification of intent to sell the property.

(b) If the public agency desiring to purchase the property and the Department of General Services are unable to arrive at a mutually acceptable sales price for the property within 180 days from the date of receipt of notice from the public agency, upon request of the public agency the Director of the Department of General Services shall hire an independent third party appraiser mutually acceptable to the agency and the department to appraise the property. If within 10 days after receipt of the appraisal the public agency and the department are unable to arrive at a mutually acceptable sales price, upon request of the agency final

determination of the sales price shall be made by the State Public Works Board. The public agency shall bear all costs of the independent third party appraisal whether or not the agency elects to purchase the property. If the agency does purchase the property, the appraisal costs shall be added to the purchase price of the property. If the public agency does not purchase the property, it shall pay the appraisal costs, and the surplus real property may be disposed of in the normal manner.

(c) After arriving at a mutually agreeable sales price, the Department of General Services and the public agency will be allowed an additional 90 days to execute a sales or exchange agreement to purchase the property. In the event an agreement is not executed by the public agency within the 90-day period, the Department of General Services may offer the property for sale in the normal manner. Should 90 days prove insufficient for the public agency to finance purchase of the property, the Public Works Board for good cause may grant an extension of time to complete the purchase. The 90-day limitation shall be suspended when a bond election is to be held for the purpose of financing the purchase of the property. However, the bond election shall be called and held on the next eligible date and this suspension of the 90-day limitation shall only be extended to the 10th day following the date of the next bond election.

(d) For purposes of this section, written notice shall be deemed given upon proper posting and deposit in the United States mail.

(e) Nothing in this section shall prohibit the state from continuing to negotiate with a public agency for the sale of surplus property pursuant to other provisions of this article.

(f) This section shall be inoperative for the period commencing with the effective date of the act that added this subdivision, until July 1, 2005.

SEC. 29. Section 11011.4 of the Government Code is amended to read:

11011.4. (a) Notwithstanding any provision to the contrary in Section 54222 or elsewhere, land may be transferred pursuant to subdivision (d) of Section 11011.1 to a local agency at the cost specified in subdivision (d) of Section 11011.1.

(b) This section shall be inoperative for the period commencing with the effective date of the act that added this subdivision, until July 1, 2005.

SEC. 30. Section 11011.5 of the Government Code is amended to read:

11011.5. (a) When no state or other public entity seeks to obtain title to specific surplus state-owned real property, a state agency authorized to sell that property, except property acquired for state highway purposes, may, with the approval of the Department of General

Services, employ a licensed real estate broker for a negotiated commission not to exceed reasonable and customary brokerage commissions applicable to similar privately owned properties in the area in connection with that sale and pay the amount of commission earned by the broker. The commission shall be paid only out of the proceeds of the sale before the proceeds are remitted to the State Treasury. The Director of General Services shall only employ the services of a broker when the director determines that the employment of a broker to sell the property would result in a cost savings to the state. Any state properties sold through the services of a broker shall be reported, along with a comparison of the estimated cost savings obtained through the use of a broker, in the annual surplus property report to the Legislature required pursuant to Section 11011.

(b) This section shall be inoperative for the period commencing with the effective date of the act that added this subdivision, until July 1, 2005.

SEC. 31. Section 11011.6 of the Government Code is amended to read:

11011.6. (a) Notwithstanding any other provision of law, land held by the state and not needed by any state agency, acquired at little or no cost from a local governmental agency or private party, and where no significant amount of state funds have been expended to preserve, improve, restore, or reclaim such lands, and if it will be used by a governmental agency for a public purpose of broad public benefit, and not a benefit basically of local interest enjoyed and used primarily by the residents of the area of tax jurisdiction of the agency, the Director of General Services, with the approval of the State Public Works Board, upon application by the agency or private party, may transfer the land to the governmental agencies at no cost.

(b) This section shall be inoperative for the period commencing with the effective date of the act that added this subdivision, until July 1, 2005.

SEC. 32. Section 11011.8 of the Government Code is amended to read:

11011.8. (a) Whenever any person, as defined in Section 17, or public agency receives any state surplus real property at less than current market value, it shall pay all interim management and administrative costs incurred by the state between the time the person or public agency expressed interest in obtaining the property and the completion of the transfer and all costs incurred by the state in transferring title to the property.

(b) This section does not apply to any transfer of surplus state property that was authorized on or before January 1, 1989.

(c) This section shall be inoperative for the period commencing with the effective date of the act that added this subdivision, until July 1, 2005.

SEC. 33. Section 11011.9 of the Government Code is amended to read:

11011.9. (a) The Legislature finds and declares that:

(1) Disposition of surplus property owned by public agencies should be utilized to further state policies.

(2) There exists within the urban and rural areas of the state a serious shortage of decent, safe, and sanitary housing which persons and families of low or moderate income can afford, and consequently there is a pressing and urgent need for the preservation and expansion of the supply of housing for such persons.

(3) The provision of decent housing for all Californians is a state goal of the highest priority. The disposal of surplus land is a direct and substantial public purpose of statewide concern and will serve an important public purpose, including mitigating the environmental effects of state activities. Therefore, it is the intent of the Legislature that priority be given in the disposal of surplus state land to housing for persons and families of low or moderate income, where such land is suitable for housing and there is a need for such housing in the community.

(4) There is an identifiable deficiency in the amount of recreational land available to the public for park, recreational, school, and open-space purposes, as well as for housing and general community development purposes in accord with state policies.

(b) It is the intent of the Legislature that surplus state property be disposed of in a manner which furthers state policies in the areas of parks, recreation, schools, open space, and housing and community development, or any combination thereof.

(c) This section shall be inoperative for the period commencing with the effective date of the act that added this subdivision, until July 1, 2005.

SEC. 34. Section 11011.10 is added to the Government Code, to read:

11011.10. (a) Until July 1, 2005, the disposal of surplus state property, including any property already declared surplus by the Legislature but not yet disposed of by the Department of General Services, shall be subject to the requirements of this section.

(b) Notwithstanding any other provision of law, all state agencies, departments, boards, and commissions, who have not already done so pursuant to Executive Order S-10-04, shall review the current and anticipated future programmatic need for the state-owned and leased property that they occupy or have under their stewardship, and identify

and report any property surplus to their current or future needs to the Department of General Services. The department may provide instructions to facilitate the reporting and determination of surplus properties.

(c) (1) The department shall review the properties identified pursuant to Executive order S-10-04 and subdivision (b) to determine whether those properties are surplus to the needs of the state, report the surplus properties to the Legislature, and request authorization from the Legislature to dispose of the properties by sale or otherwise.

(2) Any state agency with property under its jurisdiction that is determined to be surplus and authorized for disposition pursuant to this subdivision or by previous legislative action, shall provide for the maintenance of the property until it is disposed of by the department under this section.

(3) Jurisdiction of property determined to be surplus shall be transferred to the department, when requested by the Director of General Services, for sale or disposition under this section.

(d) (1) Subject to paragraphs (2) to (4), inclusive, the department may sell or otherwise dispose of property as authorized by the Legislature pursuant to subdivision (c), upon any terms and conditions and subject to any reservations and exceptions the department deems to be in the best interests of the state.

(2) (A) Notwithstanding any other provision of law, property that has been declared surplus and whose disposition has been authorized by the Legislature pursuant to subdivision (c) or by previous legislative action, and has been determined by the department not to be needed by any state agency, shall be offered to local governmental agencies prior to being offered for sale to private entities or individuals.

(B) In order to be considered as a potential buyer of the surplus property, local governmental agencies shall notify the department of their interest in the surplus state property within 60 days of receiving notice of the availability of the property. The sale of the property to a local governmental agency pursuant to this section shall be completed, and title transferred, within 90 days of the date the local governmental agency was notified of the availability of the property.

(3) If the sale of a surplus state property to a local governmental agency is not completed within the timeframe specified in subparagraph (B) of paragraph (2), the department shall offer the property for sale to private entities or individuals.

(4) Transfers of surplus property to local governmental agencies or private entities or individuals pursuant to this subdivision shall be at fair market value.

(e) Except as otherwise required by the California Constitution or federal law, the net proceeds of any property disposition, including the

sale, lease, exchange, or other means, that is received pursuant to this section shall be paid into the General Fund. For purposes of this section, ''net proceeds'' means gross proceeds less all costs directly related to the completion of the transaction including, but not limited to, selling costs, transfer fees, commissions, and costs incurred by the department.

(f) Except as otherwise required by the California Constitution or federal law, any rental moneys or other revenues received by the department from real properties, the jurisdiction of which has been transferred to the department under this section, shall be deposited in the General Fund in the account established by Section 15863. Any expenditure required to maintain, repair, care for, and sell the real property shall be paid from the appropriation made by Section 15863.

(g) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 35. Section 11794 of the Government Code is amended to read:

11794. (a) (1) The Stephen P. Teale Data Center may establish rates and collect payments from state agencies for providing services to those agencies. The methodology for computing costs and billing rates shall be subject to the approval of the Director of Finance.

(2) Commencing no later than August 1, 2005, and no later than August 1 annually thereafter, the Stephen P. Teale Data Center, or its successor entity, shall submit to the Department of Finance a proposal that reconciles the current fiscal year rates and details any adjustments proposed for budget fiscal year rates to be included in the Governor's Budget.

(b) (1) All money received by the data center pursuant to this section shall be deposited in the Stephen P. Teale Data Center Revolving Fund.

(2) In order to ensure that there is adequate cash in the fund, the data center may require monthly payments in advance by client agencies, based on estimated billings. By mutual agreement between the data center and the applicable state agency, a state agency may make monthly, quarterly, or annual payments in advance or arrears.

(c) Consistent with subdivision (b), and pursuant to Section 11255, the Controller shall transfer any amounts so authorized by the data center. The data center shall notify each affected state agency upon requesting the Controller to make the transfer.

SEC. 36. Section 12012.90 of the Government Code is amended to read:

12012.90. (a) (1) For each fiscal year commencing with the 2002–03 fiscal year, the California Gambling Control Commission shall determine the aggregate amount of shortfalls in payments that occurred

in the Indian Gaming Revenue Sharing Trust Fund pursuant to Section 4.3.2.1 of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution as determined below:

(A) For each eligible recipient Indian tribe that received money for all four quarters of the fiscal year, the difference between one million one hundred thousand dollars ($1,100,000) and the actual amount paid to each eligible recipient Indian tribe during the fiscal year from the Indian Gaming Revenue Sharing Trust Fund.

(B) For each eligible recipient Indian tribe that received moneys for less than four quarters of the fiscal year, the difference between two hundred seventy-five thousand dollars ($275,000) for each quarter in the fiscal year that a recipient Indian tribe was eligible to receive moneys and the actual amount paid to each eligible recipient Indian tribe during the fiscal year from the Indian Gaming Revenue Sharing Trust Fund.

(2) For purposes of this section, ''eligible recipient Indian tribe'' means a noncompact tribe, as defined in Section 4.3.2(a)(i) of the tribal-state gaming compacts ratified and in effect as provided in subdivision (f) of Section 19 of Article IV of the California Constitution.

(b) The California Gambling Control Commission shall provide to the committee in the Senate and Assembly that considers the State Budget an estimate of the amount needed to backfill the Indian Gaming Revenue Sharing Trust Fund on or before the date of the May budget revision for each fiscal year.

(c) An eligible recipient Indian tribe may not receive an amount from the backfill appropriated following the estimate made pursuant to subdivision (b) that would give the eligible recipient Indian tribe an aggregate amount in excess of two hundred seventy-five thousand dollars ($275,000) per eligible quarter. Any funds transferred from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund that result in a surplus shall revert back to the Indian Gaming Special Distribution Fund following the authorization of the final payment of the fiscal year.

(d) Upon a transfer of moneys from the Indian Gaming Special Distribution Fund to the Indian Gaming Revenue Sharing Trust Fund and appropriation from the trust fund, the California Gambling Control Commission shall distribute the moneys without delay to eligible recipient Indian tribes for each quarter that a tribe was eligible to receive a distribution during the fiscal year immediately preceding.

SEC. 37. Section 12152 of the Government Code is amended to read:

12152. (a) To assist him or her in the discharge of the duties of his or her office, the Secretary of State may appoint one Assistant Secretary of State, whose powers, duties and liabilities shall be those of a deputy,

and any deputies and clerical, expert, technical and other assistants necessary for the proper conduct of his or her office. The Assistant Secretary of State and all deputies are civil executive officers.

(b) Notwithstanding any other provision of law, but consistent with Section 4 of Article VII of the California Constitution and with subdivision (a) of this section, the Governor shall appoint four employees of the Secretary of State's office, who may be nominated by the Secretary of State, and who are exempt from state civil service.

SEC. 38. Section 12432 is added to the Government Code, to read:

12432. (a) The Legislature hereby finds and declares that it is essential for the state to replace the current automated human resource/payroll systems operated by the Controller to ensure that state employees continue to be paid accurately and on time and that the state may take advantage of new capabilities and improved business practices. To achieve this replacement of the current systems, the Controller is authorized to procure, modify, and implement a new human resource management system that meets the needs of a modern state government. This replacement effort is known as the 21st Century Project.

(b) Notwithstanding any other provision of law, beginning with the 2004–05 fiscal year, the Controller may assess the special and nongovernmental cost funds in sufficient amounts to pay for the authorized 21st Century Project costs that are attributable to those funds. Assessments in support of the expenditures for the 21st Century Project shall be made quarterly, and the total amount assessed from these funds annually may not exceed the total expenditures incurred by the Controller for the 21st Century Project that are attributable to those funds in that fiscal year. Appropriations for this purpose shall be made in the annual Budget Act.

(c) To the extent permitted by law, beginning with the 2004–05 fiscal year, the Controller shall establish agreements with various agencies and departments for the collection from federal funds of costs that are attributable to federal funds. The total amount collected from those agencies and departments annually may not exceed the total expenditures incurred by the Controller for the 21st Century Project that are attributable to federal funds in that fiscal year. Appropriations for that purpose shall be made in the annual Budget Act.

(d) It is the intent of the Legislature that, beginning not earlier than the 2006–07 fiscal year, future annual Budget Acts include General Fund appropriations in sufficient amounts for expenditures for the 21st Century Project that are attributable to the General Fund. It is the Legislature's intent that the share of the total project costs paid for by the General Fund shall be equivalent to the share of the total project costs

paid for from special and nongovernmental cost fund assessments and collections from federal funds.

(e) This section shall remain in effect only until June 30, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before June 30, 2011, deletes or extends that date.

SEC. 39. Section 12439 of the Government Code is amended to read:

12439. (a) Beginning July 1, 2002, any state position that is vacant for six consecutive monthly pay periods shall be abolished by the Controller on the following July 1. The six consecutive monthly pay periods may occur entirely within one fiscal year or between two consecutive fiscal years.

(b) The Director of Finance may authorize the reestablishment of any positions abolished pursuant to this section if one or more of the following conditions existed during part or all of the six consecutive monthly pay periods:

(1) There was a hiring freeze in effect during part or all of the six consecutive pay periods.

(2) The department has diligently attempted to fill the position, but was unable to complete all the steps necessary to fill the position within six months.

(3) The position has been designated as a management position for purposes of collective bargaining and has been held vacant pending the appointment of the director, or other chief executive officer, of the department as part of the transition from one Governor to the succeeding Governor.

(4) The classification of the position is determined to be hard-to-fill.

(5) Late enactment of the budget causes the department to delay filling the position.

(c) The Controller shall reestablish any position for which the director of the department in which that position existed prior to abolishment certifies by August 15 that one or more of the following conditions existed during part or all of the six consecutive pay periods.

(1) The position is necessary for directly providing 24-hour care in an institution operated by the state.

(2) The position is necessary for the state to satisfy any licensing requirements adopted by a local, state, or federal licensing or other regulatory agency.

(3) The position is directly involved in services for public health, public safety, or homeland security.

(4) The position is being held vacant because the previous incumbent is eligible to exercise a mandatory right of return from a leave of absence as may be required by any provision of law including, but not limited to,

leaves for industrial disability, nonindustrial disability, military service, pregnancy, childbirth, or care of a newborn infant.

(5) The position is being held vacant because the department has granted the previous incumbent a permissive leave of absence as may be authorized by any provision of law including, but not limited to, leaves for adoption of a child, education, civilian military work, or to assume a temporary assignment in another agency.

(6) Elimination of the position will directly reduce state revenues or other income by more than would be saved by elimination of the position.

(7) The position is funded entirely from moneys appropriated pursuant to Section 221 of the Food and Agricultural Code, was established with the Controller pursuant to Section 221.1 of the Food and Agricultural Code, and directly responds to unforeseen agricultural circumstances requiring the relative expertise that the position provides.

(d) Each department shall maintain for future independent audit all records on which the department relied in determining that any position or positions satisfied one or more of the criteria specified in paragraphs (1) to (6), inclusive, of subdivision (c).

(e) The only other exceptions to the abolishment required by subdivision (a) are those positions exempt from civil service or those instructional and instruction-related positions authorized for the California State University. No money appropriated by the subsequent Budget Act shall be used to pay the salary of any otherwise authorized state position that is abolished pursuant to this section.

(f) The Controller, no later than September 10 of each fiscal year, shall furnish the Department of Finance in writing a preliminary report of any authorized state positions that were abolished effective on the preceding July 1 pursuant to this section.

(g) The Controller, no later than October 15 of each fiscal year, shall furnish the Joint Legislative Budget Committee and the Department of Finance a final report on all positions that were abolished effective on the preceding July 1.

(h) Departments shall not execute any personnel transactions for the purpose of circumventing the provisions of this section.

(i) Each department shall include a section discussing its compliance with this section when it prepares its report pursuant to Section 13405.

(j) As used in this section, department refers to any department, agency, board, commission, or other organizational unit of state government that is empowered to appoint persons to civil service positions.

(k) This section shall become operative July 1, 2002.

SEC. 40. Section 12715 of the Government Code is amended to read:

12715. (a) The Controller, acting in consultation with the California Gambling Control Commission, shall divide the County Tribal Casino Account for each county that has gaming devices that are subject to an obligation to make contributions to the Indian Gaming Special Distribution Fund into a separate account for each tribe that operates a casino within the county. These accounts shall be known as Individual Tribal Casino Accounts, and funds may be released from these accounts to make grants selected by an Indian Gaming Local Community Benefit Committee pursuant to the method established by this section to local jurisdictions impacted by tribal casinos. Each Individual Tribal Casino Account shall be funded in proportion to the amount that each individual tribe paid in the prior fiscal year to the Indian Gaming Special Distribution Fund.

(b) (1) There is hereby created in each county in which Indian gaming is conducted an Indian Gaming Local Community Benefit Committee. The selection of all grants from each Individual Tribal Casino Account or County Tribal Casino Account shall be made by each county's Indian Gaming Local Community Benefit Committee. In selecting grants, the Indian Gaming Local Community Benefit Committee shall follow the priorities established in subdivision (g). This committee has the following additional responsibilities:

(A) Establishing all application policies and procedures for grants from the Individual Tribal Casino Account or County Tribal Casino Account.

(B) Assessing the eligibility of applications for grants from local jurisdictions impacted by tribal gaming operations.

(C) Determining the appropriate amount for reimbursement from the aggregate county tribal account of the demonstrated costs incurred by the county for administering the grant programs. The reimbursement for county administrative costs may not exceed 2 percent of the aggregate county tribal account in any given fiscal year.

(2) The Indian Gaming Local Community Benefit Committee shall be composed of seven representatives, consisting of the following:

(A) Two representatives from the county, selected by the county board of supervisors.

(B) Three elected representatives from cities located within four miles of a tribal casino in the county, selected by the county board of supervisors. In the event that there are no cities located within four miles of a tribal casino in the county, other local representatives may be selected upon mutual agreement by the county board of supervisors and a majority of the tribes paying into the Indian Gaming Special Distribution Fund in the county. When there are no cities within four miles of a tribal casino in the county, and when the Indian Gaming Local Community Benefit Committee acts on behalf of a county where no

tribes pay into the Indian Gaming Special Distribution Fund, other local representatives may be selected upon mutual agreement by the county board of supervisors and a majority of the tribes operating casinos in the county.

(C) Two representatives selected upon the recommendation of a majority of the tribes paying into the Indian Gaming Special Distribution Fund in each county. When an Indian Gaming Local Community Benefit Committee acts on behalf of a county where no tribes pay into the Indian Gaming Special Distribution Fund, the two representatives may be selected upon the recommendation of the tribes operating casinos in the county.

(c) Sixty percent of each individual tribal casino account shall be available for nexus grants on a yearly basis to cities and counties impacted by tribes that are paying into the Indian Gaming Special Distribution Fund, according to the four-part nexus test described in paragraph (1). Grant awards shall be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and these multiyear grants shall be accounted for in the grant process for each year.

(1) A nexus test based on the geographical proximity of a local government jurisdiction to an individual Indian land upon which a tribal casino is located shall be used by each county's Indian Gaming Local Community Benefit Committee to determine relative priority for grants, using the following criteria:

(A) Whether the local government jurisdiction borders the Indian lands on all sides.

(B) Whether the local government jurisdiction partially borders Indian lands.

(C) Whether the local government jurisdiction maintains a highway, road, or other thoroughfare that is the predominant access route to a casino that is located within four miles.

(D) Whether all or a portion of the local government jurisdiction is located within four miles of a casino.

(2) Fifty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet all four of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (3) or (4).

(3) Thirty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet three of the nexus test criteria in paragraph (1). If no eligible local

government jurisdiction satisfies this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (2) or (4).

(4) Twenty percent of the amount specified in subdivision (c) shall be awarded in equal proportions to local government jurisdictions that meet two of the nexus test criteria in paragraph (1). If no eligible local government jurisdiction satisfies this requirement, the amount specified in this paragraph shall be made available for nexus grants in equal proportions to local government jurisdictions meeting the requirements of paragraph (2) or (3).

(d) Twenty percent of each individual tribal casino account shall be available for discretionary grants to local jurisdictions impacted by tribes that are paying into the Indian Gaming Special Distribution Fund. These discretionary grants shall be made available to all local jurisdictions in the county irrespective of any nexus to impacts from any particular tribal casino, as described in paragraph (1) of subdivision (c). Grant awards shall be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and these multiyear grants shall be accounted for in the grant process for each year.

(e) (1) Twenty percent of each individual tribal casino account shall be available for discretionary grants to local jurisdictions impacted by tribes that are not paying into the Indian Gaming Special Distribution Fund. These grants shall be made available to local jurisdictions in the county irrespective of any nexus to impacts from any particular tribal casino, as described in paragraph (1) of subdivision (c), and irrespective of whether the impacts presented are from a tribal casino that is not paying into the Indian Gaming Special Distribution Fund. Grant awards shall be selected by each county's Indian Gaming Local Community Benefit Committee and shall be administered by the county. Grants may be awarded on a multiyear basis, and of these multiyear grants shall be accounted for in the grant process for each year.

(A) Grants awarded pursuant to this subdivision are limited to addressing service-oriented impacts and providing assistance with one-time large capital projects related to Indian gaming impacts.

(B) Grants shall be subject to the sole sponsorship of the tribe that pays into the Indian Gaming Special Distribution Fund and the recommendations of the Indian Gaming Local Community Benefit Committee for that county.

(2) If an eligible county does not have a tribal casino operated by a tribe that does not pay into the Indian Gaming Special Distribution Fund, the money available for discretionary grants under this subdivision shall be available for distribution pursuant to subdivision (d).

(f) (1) For each county that does not have gaming devices subject to an obligation to make payments to the Indian Gaming Special Distribution Fund, funds may be released from the county's County Tribal Casino Account to make grants selected by the county's Indian Gaming Local Community Benefit Committee pursuant to the method established by this section to local jurisdictions impacted by tribal casinos. These grants shall be made available to local jurisdictions in the county irrespective of any nexus to any particular tribal casino. These grants shall follow the priorities specified in subdivision (g).

(2) Funds not allocated from an individual tribal casino account by the end of each fiscal year shall revert back to the Indian Gaming Special Distribution Fund. Moneys allocated for the 2003–04 fiscal year shall be eligible for expenditure through December 31, 2004.

(g) The following uses shall be the priorities for the receipt of grant money from Individual Tribal Casino Accounts: law enforcement, fire services, emergency medical services, environmental impacts, water supplies, waste disposal, behavioral, health, planning and adjacent land uses, public health, roads, recreation and youth programs, and child care programs.

(h) All grants from Individual Tribal Casino Accounts shall be made only upon the affirmative sponsorship of the tribe paying into the Indian Gaming Special Distribution Fund from whose individual tribal casino account the grant moneys are available for distribution. Tribal sponsorship shall confirm that the grant application has a reasonable relationship to a casino impact and satisfies at least one of the priorities listed in subdivision (g). A grant may not be made for any purpose that would support or fund, directly or indirectly, any effort related to opposition or challenge to Indian gaming in the state, and, to the extent any awarded grant is utilized for any prohibited purpose by any local government, upon notice given to the county by any tribe from whose Individual Tribal Casino Account the awarded grant went toward that prohibited use, the grant shall terminate immediately and any moneys not yet used shall again be made available for qualified nexus grants.

(i) A local government jurisdiction that is a recipient of a grant from an Individual County Tribal Casino Account or a County Tribal Casino Account shall provide notice to the public, either through a slogan, signage, or other mechanism, which states that the local government project has received funding from the Indian Gaming Special Distribution Fund and which further identifies the particular Individual Tribal Casino Account from which the grant derives.

(j) (1) Each county's Indian Gaming Local Benefit Committee shall submit to the Controller a list of approved projects for funding from Individual Tribal Casino Accounts. Upon receipt of this list, the

Controller shall release the funds directly to the local government entities for which a grant has been approved by the committee.

(2) Funds not allocated from an individual tribal casino account by the end of each fiscal year shall revert back to the Indian Gaming Special Distribution Fund. Moneys allocated for the 2003–04 fiscal year shall be eligible for expenditure through December 31, 2004.

SEC. 41. Section 13332.04 of the Government Code is repealed.

SEC. 42. Section 13332.11 of the Government Code is amended to read:

13332.11. (a) (1) Except as otherwise specified in paragraph (2), no funds appropriated for capital outlay may be expended by any state agency, including the University of California, the California State University, and the community colleges, until the Department of Finance and the State Public Works Board have approved preliminary plans for the project to be funded from a capital outlay appropriation.

(2) Paragraph (1) shall not apply to any of the following:

(A) Amounts for acquisition of real property in fee, or any other lesser interest.

(B) Amounts for equipment or minor capital outlay projects.

(C) Amounts appropriated for preliminary plans, surveys, and studies.

(b) Notwithstanding subdivision (a), approvals by the State Public Works Board and the Department of Finance for the University of California and the community colleges shall apply only to the allocation of state capital outlay funds appropriated by the Legislature, including land acquisition and equipment funds.

(c) Any appropriated amounts for working drawings or construction where the working drawings or construction have been started by any state agency prior to approval of the preliminary plans by the State Public Works Board, and all amounts not approved by the board under this section shall be reverted to the fund from which the appropriation was made. No major project for which a capital outlay appropriation is made shall be put out to bid until the working drawings have been approved by the Department of Finance. No substantial change shall be made to the approved preliminary plans or approved working drawings without written approval by the Department of Finance. Any proposed construction bid alternates shall be approved by the Department of Finance.

(d) The Department of Finance shall approve the use of funds from a capital outlay appropriation for the purchase of any significant unit of equipment.

(e) The State Public Works Board may augment a major project in an amount of up to 20 percent of the total of the capital outlay appropriations for the project, irrespective of whether any such

appropriation has reverted. The State Public Works Board shall defer all augmentations in excess of 20 percent of the amount appropriated for each capital outlay project until the Legislature makes additional funds available for the specific project.

(f) In addition to the powers provided by Section 15849.6, the State Public Works Board may further increase the additional amount in Section 15849.6 to include a reasonable construction reserve within the construction fund for any capital outlay project without augmenting the project. The amount of the construction reserve shall be within the 20 percent augmentation limitation. The State Public Works Board may use this amount to augment the project, when and if necessary, after the lease revenue bonds are sold to assure completion of the project. Upon completion of the project, any amount remaining in the construction reserve funds shall be used to offset rental payments.

(g) Augmentations in excess of 10 percent of the amount appropriated for each capital outlay project shall be reported to the Chairperson of the Joint Legislative Budget Committee, or his or her designee, 20 days prior to board approval, or not sooner than whatever lesser time the chairperson, or his or her designee, may in each instance determine.

(h) Prior to State Public Works Board action on any capital outlay appropriation, the Department of Finance shall certify, in writing, to the Chairperson of the Joint Legislative Budget Committee, the chairpersons of the respective fiscal committees, and the legislative advisors of the board that the requested action is in accordance with the legislatively approved scope and cost. If, pursuant to the other provisions of this section, the Department of Finance approves changes to the approved scope or cost, or both, the department shall report the changes and associated cost implications.

(i) The State Public Works Board shall defer action with respect to approval of an acquisition project, when it is determined that the estimated cost of the total acquisition project, as approved by the Legislature is in excess of 20 percent of the amount appropriated, unless it is determined that a lesser portion of the property is sufficient to meet the objectives of the project approved by the Legislature, and the Chairperson of the Joint Legislative Budget Committee, or his or her designee, is provided a 20-day prior notification of the proposed reductions in the acquisition project, or whatever lesser period the chairperson, or his or her designee, may in each instance determine.

(j) The State Public Works Board shall defer action with respect to the approval of preliminary plans when it is determined that the estimated cost of the total capital outlay construction project, as approved by the Legislature, is in excess of 20 percent of the amount appropriated.

(k) Nothing in this section shall be construed to limit or control the Department of Transportation or the California Exposition and State Fair in the expenditure of all funds appropriated to the department for capital outlay purposes.

SEC. 43. Section 13332.19 of the Government Code is amended to read:

13332.19. (a) For the purposes of this section, the following definitions shall apply:

(1) ''Design-build'' means a construction procurement process in which both the design and construction of a project are procured from a single entity.

(2) ''Design-build project'' means a capital outlay project using the design-build construction procurement process.

(3) ''Design-build entity'' means a partnership, corporation, or other legal entity that is able to provide appropriately licensed contracting, architectural, and engineering services as needed.

(4) ''Design-build solicitation package'' means the performance criteria, any concept drawings deemed necessary by the Department of General Services, the form of contract, and all other documents and information that serve as the basis on which bids or proposals will be solicited from the design-build entities.

(5) ''Design-build phase'' means the period following the award of a contract to a design-build entity in which the design-build entity completes the design and construction activities necessary to fully complete the project in compliance with the terms of the contract.

(6) ''Performance criteria'' means the information that fully describes the scope of the proposed project and includes, but is not limited to, the size, type, and design character of the buildings and site; the required form, fit, function, operational requirements, and quality of design, materials, equipment, and workmanship; and any other information deemed necessary to sufficiently describe the state's needs.

(7)''Concept drawings'' means any schematic drawings or architectural renderings that are prepared, in addition to performance criteria, in such detail as the Director of General Services determines necessary to sufficiently describe the state's needs.

(b) Except as otherwise specified in paragraphs (1) to (4), inclusive, no funds appropriated for a design-build project may be expended until the Department of Finance and the State Public Works Board have approved performance criteria or performance criteria and concept drawings for the project.

This section shall not apply to any of the following:

(1) Amounts for acquisition of real property, in fee or any lesser interest.

(2) Amounts for equipment or minor capital outlay projects.

(3) Amounts appropriated for performance criteria and concept drawings.

(4) Amounts appropriated for preliminary plans, if the appropriation was made prior to January 1, 2005.

(c) Any appropriated amounts for the design-build phase of a design-build project, where funds have been expended on the design-build phase by any state agency prior to the approval of the performance criteria or the performance criteria and concept drawings by the State Public Works Board, and all amounts not approved by the State Public Works Board under this section shall be reverted to the fund from which the appropriation was made. No design-build project for which a capital outlay appropriation is made shall be put out to design-build solicitation until the bid package has been approved by the Department of Finance. No substantial change shall be made to the performance criteria or to performance criteria and concept drawings as approved by the State Public Works Board and the Department of Finance without written approval by the Department of Finance. Any proposed bid alternates shall be approved by the Department of Finance.

(d) The State Public Works Board may augment a design-build project in an amount of up to 20 percent of the capital outlay appropriations for the project, irrespective of whether any such appropriation has reverted. The State Public Works Board shall defer all augmentations in excess of 20 percent of the amount appropriated for each design-build project until the Legislature makes additional funds available for the specific project.

(e) In addition to the powers provided by Section 15849.6, the State Public Works Board may further increase the additional amount in Section 15849.6 to include a reasonable construction reserve within the construction fund for any capital outlay project without augmenting the project. The amount of the construction reserve shall be within the 20 percent augmentation limitation. The State Public Works Board may use this amount to augment the project, when and if necessary, after the lease revenue bonds are sold to assure completion of the project. Upon completion of the project, any amount remaining in the construction reserve fund shall be used to offset rental payments.

(f) Any augmentation in excess of 10 percent of the amounts appropriated for each design-build project shall be reported to the Chairperson of the Joint Legislative Budget Committee, or his or her designee, 20 days prior to board approval, or not sooner than whatever lesser time the chairperson, or his or her designee, may in each instance determine.

(g) Prior to State Public Works Board action on any capital outlay appropriation for a design-build project, the Department of Finance shall certify, in writing, to the Chairperson of the Joint Legislative Budget

Committee, the chairpersons of the respective fiscal committees, and the legislative members of the board that the requested action is in accordance with the legislatively approved scope and cost. If, pursuant to other provisions of this section, the Department of Finance approves changes to the approved scope or cost, or both, the department shall report the changes and associated cost implications.

(h) The State Public Works Board shall defer action with respect to approval of performance criteria or performance criteria and concept drawings, when it is determined that the estimated cost of the total design-build project approved by the Legislature is in excess of 20 percent of the amount appropriated.

SEC. 44. Section 13923 of the Government Code is amended to read:

13923. The board may approve plans for payroll deduction from the salaries or wages of state officers and employees under subdivision (f) of Section 1151 for charitable contributions to the agency handling the principal combined fund drive in any area. The board shall establish necessary rules and regulations, including the following:

(a) Standards for establishing what constitutes the principal combined fund drive in an area.

(b) A requirement that the agency to receive these contributions shall pay, for deposit in the General Fund, the additional cost to the state of making these deductions and remitting the proceeds, as determined by the Controller.

(c) A requirement that the agency to receive these contributions shall pay, for deposit in the General Fund, the board's cost to administer the annual charitable campaign fund drive. This amount shall be determined by the board and may be appropriated in support of the board as reimbursements to Item 8700-001-0001 of the annual Budget Act.

(d) Provisions for standard amounts of deductions from which each state officer or employee may select the contribution that he or she desires to make, if any.

(e) A prohibition upon state officers or employees authorizing more than one payroll deduction for charitable purposes to be in effect at the same time.

(f) A provision authorizing the Controller to combine in his or her records deductions for employee association dues, if authorized, and charitable deductions, if authorized.

The board, in addition, may approve requests of any charitable organization qualified as an exempt organization under Section 23701d of the Revenue and Taxation Code, and paragraph (3) of subsection (c) of Section 501 of the Internal Revenue Code of 1954, which is not an affiliated member beneficiary of the principal combined fund drive to receive designated deductions from the principal fund drive.

The principal combined fund drive agency, any charitable organization which is an affiliated member beneficiary of the principal combined fund drive, and any charitable organization approved by the board to receive designated deductions on the payroll authorization form of the principal fund drive, shall certify under penalty of perjury to the board that it is in compliance with the Fair Employment and Housing Act, Part 2.8 (commencing with Section 12900), as a condition of receiving these designated deductions.

The principal combined fund drive shall obtain from the board the list of approved nonaffiliated beneficiaries, eligible for designated deductions in its approved drive area, and shall provide this information to each employee at the time of the principal fund drive. The principal combined drive agency shall provide a designation form for the employee to indicate those amounts to be contributed to affiliated and nonaffiliated beneficiaries. The designation form shall consist of a copy for each of the following: (1) the employee, (2) the employee's designated beneficiary agency, and (3) the principal combined fund drive agency. The principal combined fund drive agency shall pay the amount collected for the employee designated beneficiary agency less the amount necessary to reimburse the principal combined fund drive agency for fundraising and administrative expenses. The fee charged for fundraising and administrative cost reimbursement shall be determined by the board, published in campaign literature and made available to the employee during the solicitation process.

Nothing contained in this section shall preclude a principal fund drive agency from giving a percentage of the undesignated funds to charities which are not members of the agency handling the principal drive, or honoring an employee's designated deduction to any charitable organization.

SEC. 45. Section 14604 is added to the Government Code, to read:

14604. Commencing no later than August 1, 2005, and no later than August 1 annually thereafter, the Department of General Services shall submit to the Department of Finance a proposal that reconciles the current fiscal year rates for service fees charged by the Department of General Services to state agencies, and details any adjustments proposed for budget fiscal year rates to be included in the Governor's Budget.

SEC. 46. Section 14612.2 of the Government Code is amended to read:

14612.2. (a) Notwithstanding Chapter 7 (commencing with Section 14850) of Part 5.5 of Division 3 of Title 2 of, or Section 14901 of, the Government Code, no agency is required to use the Office of State Publishing for its printing needs and the Office of State Publishing may offer printing services to both state and other public agencies, including cities, counties, special districts, community college districts, the

California State University, the University of California, and agencies of the United States government. When soliciting bids for printing services from the private sector, all state agencies shall also solicit a bid from the Office of State Publishing when the project is anticipated to cost more than five thousand dollars ($5,000).

(b) This section shall remain operative only until the effective date of the Budget Act of 2005 or July 1, 2005, whichever is later, 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. 47. Section 14661 of the Government Code is amended to read:

14661. (a) For the purposes of this section, the definitions in subdivision (a) of Section 13332.19 shall apply.

(b) Notwithstanding any provision of the Public Contract Code or any other provision of law, when the Legislature authorizes the use of the design-build construction procurement process for a specific project, the Director of General Services may contract and procure state office facilities and other buildings, structures, and related facilities pursuant to this section.

(c) Prior to contracting with a design-build entity for the procurement of state office facilities and other state buildings and structures, the director shall:

(1) Prepare a program setting forth the performance criteria for the design-build project. The performance criteria shall be prepared by a design professional duly licensed and registered in the State of California.

(2) (A) Establish a competitive prequalification and selection process for design-build entities, including any subcontractors listed at the time of bid, that clearly specifies the prequalification criteria, and states the manner in which the winning design-build entity will be selected.

(B) Prequalification shall be limited to consideration of all of the following criteria:

(i) Possession of all required licenses, registration, and credentials in good standing that are required to design and construct the project.

(ii) Submission of evidence that establishes that the design-build entity members have completed, or demonstrated the capability to complete, projects of similar size, scope, or complexity, and that proposed key personnel have sufficient experience and training to competently manage and complete the design and construction of the project.

(iii) Submission of a proposed project management plan that establishes that the design-build entity has the experience, competence, and capacity needed to effectively complete the project.

(iv) Submission of evidence that establishes that the design-build entity has the capacity to obtain all required payment and performance bonding, liability insurance, and errors and omissions insurance, as well as a financial statement that assures the department that the design-build entity has the capacity to complete the project.

(v) Provision of a declaration certifying that applying members of the design-build entity have not had a surety company finish work on any project within the last five years.

(vi) Provision of information and a declaration providing detail concerning all of the following:

(I) Any construction or design claim or litigation totaling more than five hundred thousand dollars ($500,000) or 5 percent of the annual value of work performed, whichever is less, settled against any member of the design-build entity over the last five years.

(II) Serious violations of the Occupational Safety and Health Act, as provided in Part 1 (commencing with Section 6300) of Division 5 of the Labor Code, settled against any member of the design-build entity.

(III) Violations of federal or state law, including, but not limited to, those laws governing the payment of wages, benefits, or personal income tax withholding, or of Federal Insurance Contributions Act (FICA) withholding requirements, state disability insurance withholding, or unemployment insurance payment requirements, settled against any member of the design-build entity over the last five years. For the purposes of this subclause, only violations by a design-build member as an employer shall be deemed applicable, unless it is shown that the design-build entity member, in his or her capacity as an employer, had knowledge of his or her subcontractor's violations or failed to comply with the conditions set forth in subdivision (b) of Section 1775 of the Labor Code.

(IV) Information required by Section 10162 of the Public Contract Code.

(V) Violations of the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), excluding alleged violations or complaints.

(VI) Any conviction of any member of the design-build entity of submitting a false or fraudulent claim to a public agency over the last five years.

(vii) Provision of a declaration that the design-build entity will comply with all other provisions of law applicable to the project, including, but not limited to, the requirements of Chapter 1

(commencing with Section 1720) of Part 7 of Division 2 of the Labor Code.

(C) The director, when requested by the design-build entity, shall hold in confidence any information required by clauses (i) to (vi), inclusive.

(D) Any declaration required under subparagraph (B) shall state that reasonable diligence has been used in its preparation and that it is true and complete to the best of the signer's knowledge. A person who certifies as true any material matter that he or she knows to be false is guilty of a misdemeanor and shall be punished by not more than one year in a county jail, by a fine of not more than five thousand dollars ($5,000), or by both the fine and imprisonment.

(3) (A) Determine, as he or she deems in the best interests of the state, which of the following methods listed in subparagraph (B) will be used as the process for the winning design-build entity. The director shall provide a notification to the State Public Works Board, regarding the method selected for determining the winning design-build entity, at least 30 days prior to publicizing the design-build solicitation package.

(B) The director shall make his or her determination by choosing one of the following methods:

(i) A design-build competition based upon performance, price, and other criteria set forth by the department in the design-build solicitation package. The department shall establish technical criteria and methodology, including price, to evaluate proposals and shall describe the criteria and methodology in the design-build solicitation package. Award shall be made to the design-build entity whose proposal is judged as providing the best value in meeting the interest of the department and meeting the objectives of the project. A project with an approved budget of ten million dollars ($10,000,000) or more may be awarded pursuant to this clause.

(ii) A design-build competition based upon performance and other criteria set forth by the department in the design-build solicitation package. Criteria used in this evaluation of proposals may include, but need not be limited to, items such as proposed design approach, life-cycle costs, project features, and functions. However, any criteria and methods used to evaluate proposals shall be limited to those contained in the design-build solicitation package. Award shall be made to the design-build entity whose proposal is judged as providing the best value, for the lowest price, meeting the interests of the department and meeting the objectives of the project. A project with an approved budget of ten million dollars ($10,000,000) or more may be awarded pursuant to this clause.

(iii) A design-build competition based upon program requirements and a detailed scope of work, including any performance criteria and

concept drawings set forth by the department in the design-build solicitation package. Award shall be made on the basis of the lowest responsible bid. A project with an approved budget of two hundred fifty thousand dollars ($250,000) or more may be awarded pursuant to this clause.

(4) For the purposes of this subdivision, the following definitions shall apply:

(A) ''Best interest of the state'' means a design-build process that is projected by the director to reduce the project delivery schedule and total cost of a project while maintaining a high level of quality workmanship and materials, when compared to the traditional design-bid-build process.

(B) ''Best value'' means a value determined by objective criteria that may include, but is not limited to, price, features, functions, life cycle costs, experience, and other criteria deemed appropriate by the department.

(d) The Legislature recognizes that the design-build entity is charged with performing both design and construction. Because a design-build contract may be awarded prior to the completion of the design, it is often impracticable for the design-build entity to list all subcontractors at the time of the award. As a result, the subcontractor listing requirements contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code can create a conflict with the implementation of the design-build process by requiring all subcontractors to be listed at a time when a sufficient set of plans may not be available. It is the intent of the Legislature to establish a clear process for the selection and award of subcontracts entered into pursuant to this section in a manner that retains protection for subcontractors while enabling design-build projects to be administered in an efficient fashion. Therefore, all of the following requirements shall apply to subcontractors, licensed pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code, that are employed on design-build projects undertaken pursuant to this section:

(1) The department, in each design-build solicitation package, may identify types of subcontractors, by subcontractor license classification, that will be listed by the design-build entity at the time of the bid. In selecting the subcontractors that will be listed by the design-build entity, the department shall limit the identification to only those license classifications deemed essential for proper completion of the project. In no event, however, may the department specify more than five licensed subcontractor classifications. In addition, at its discretion, the design-build entity may list an additional two subcontractors, identified by subcontractor license classification, that will perform design or

construction work, or both, on the project. In no event shall the design-build entity list at the time of bid a total amount of subcontractors that will perform design or construction work, or both, in a total of more than seven subcontractor license classifications on a project. All subcontractors that are listed at the time of bid shall be afforded all of the protection contained in Chapter 4 (commencing with Section 4100) of Part 1 of Division 2 of the Public Contract Code. All subcontracts that were not listed by the design-build entity at the time of bid shall be awarded in accordance with paragraph (2).

(2) All subcontracts that were not to be performed by the design-build entity in accordance with paragraph (1) shall be competitively bid and awarded by the design-build entity, in accordance with the design-build process set forth by the department in the design-build solicitation package. The design-build entity shall do all of the following:

(A) Provide public notice of the availability of work to be subcontracted in accordance with Section 10140 of the Public Contract Code.

(B) Provide a fixed date and time on which the subcontracted work will be awarded in accordance with Section 10141 of the Public Contract Code.

(C) As authorized by the department, establish reasonable prequalification criteria and standards, limited in scope to those detailed in paragraph (2) of subdivision (c).

(D) Provide that the subcontracted work shall be awarded to the lowest responsible bidder.

(e) This section shall not be construed and is not intended to extend or limit the authority specified in Section 19130.

(f) Any design-build entity that is selected to design and construct a project pursuant to this section shall possess or obtain sufficient bonding consistent with applicable provisions of the Public Contract Code. Nothing in this section shall prohibit a general or engineering contractor from being designated the lead entity on a design-build entity for the purposes of purchasing necessary bonding to cover the activities of the design-build entity.

(g) Any payment or performance bond written for the purposes of this section shall use a bond form developed by the department. In developing the bond form, the department shall consult with the surety industry to achieve a bond form that is consistent with surety industry standards, while protecting the interests of the state.

SEC. 48. Section 15201 of the Government Code is amended to read:

15201. As used in this chapter, ''costs incurred by the county'' means all costs, except normal salaries and expenses, incurred by the county in bringing to trial or trials, including the trial or trials of, a person

or persons for the offense of homicide, including costs, except normal salaries and expenses, incurred by the district attorney in investigation and prosecution, by the sheriff in investigation, by the public defender or court-appointed attorney or attorneys in investigation and defense, and all other costs, except normal salaries and expenses, incurred by the county in connection with bringing the person or persons to trial including the trial itself, which includes extraordinary expenses for such services as witness fees and expenses, court-appointed expert witnesses, reporter fees, and costs in preparing transcripts. Trial costs shall also include all pretrials, hearings, and postconviction proceedings, if any. ''Costs incurred by the county'' do not include any costs paid by the superior court or for which the superior court is responsible.

SEC. 49. Section 16182 of the Government Code is amended to read:

16182. (a) All sums paid by the Controller under the provisions of this chapter, together with interest thereon, shall be secured by a lien in favor of the State of California upon the real property or a mobilehome for which property taxes have been postponed, or both. In the case of a residential dwelling which is part of a larger parcel taxed as a unit, such as a duplex, farm, or multipurpose or multidwelling building, the lien shall be against the entire tax parcel.

(b) In the case of real property:

(1) The lien shall be evidenced by a notice of lien for postponed property taxes executed by the Controller, or the authorized delegate of the Controller, and shall secure all sums paid or owing pursuant to this chapter, including amounts paid subsequent to the initial payment of postponed taxes on the real property described in the notice of lien.

(2) The notice of lien may bear the facsimile signature of the Controller. Each signature shall be that of the person who shall be in the office at the time of execution of the notice of lien; provided, however, that such notice of lien shall be valid and binding notwithstanding any such person having ceased to hold the office of Controller before the date of recordation.

(3) The form and contents of the notice of lien for postponed property taxes shall be prescribed by the Controller and shall include, but not be limited to, the following:

(A) The names of all record owners of the real property for which the Controller has advanced funds for the payment of real property taxes.

(B) A description of the real property for which real property taxes have been paid.

(C) The identification number of the notice of lien which has been assigned the lien by the Controller.

(4) The notice of lien shall be recorded in the office of the county recorder for the county in which the real property subject to the lien is located.

(5) The recorded notice of lien shall be indexed in the Grantor Index to the names of all record owners of the real property and in the Grantee Index to the Controller of the State of California.

(6) After the notice of lien has been duly recorded and indexed, it shall be returned by the county recorder to the office of the Controller. The recorder shall provide the county tax collector with a copy of the notice of lien which has been recorded by the Controller.

(7) From the time of recordation of a notice of lien for postponed property taxes, a lien shall attach to the real property described therein and shall have the priority of a judgment lien for all amounts secured thereby, except that the lien shall remain in effect until either of the following occurs:

(A) It is released by the Controller in the manner prescribed by Section 16186.

(B) The foreclosure or sale of an obligation secured by a lien which is senior in priority to the lien of the State of California.

(c) In the case of mobilehomes:

(1) The lien shall be evidenced by a notice of lien for postponed property taxes executed by the Controller, or the authorized delegate of the Controller, and shall secure all sums paid or owing pursuant to this chapter.

(2) The notice of lien may bear the facsimile signature of the Controller. The signature shall be that of the person who is in the office at the time of execution of the notice of lien. However, the notice of lien is valid and binding notwithstanding the person having ceased to hold the office of Controller before the date of filing.

(3) The form and contents of the notice of lien for postponed property taxes shall be prescribed by the Controller and shall include, but not be limited to, all of the following:

(A) The name or names of the registered owner or owners, legal owner or owners, if different than the registered owner or owners and the names, if any, of all junior lienholders.

(B) The identification number of the notice of lien which has been assigned the lien by the Controller.

(4) The notice of lien shall be transmitted to the Department of Housing and Community Development at its office in Sacramento, California.

(5) Upon receipt of the notice of lien for postponed property taxes from the Controller, the Department of Housing and Community Development shall amend the permanent title record of the mobilehome

to reflect that the property taxes on the mobilehome are subject to postponement.

(6) The Department of Housing and Community Development shall provide the Controller with an acknowledgement of receipt and amendment of the permanent title record.

(7) From the time the Department of Housing and Community Development receives the notice of lien from the Controller, the department shall impose a moratorium on any other amendments to the permanent title record of the mobilehome for purposes of transferring any ownership interest or transferring or creating any security interest in the mobilehome, until released by the Controller in the manner prescribed by Section 16186 or an authorization for the amendments is given by the Controller in writing.

(d) From the time of filing a notice of lien, a lien shall attach to the mobilehome for which eligibility for the postponement of property taxes has been granted.

(e) Notwithstanding any other provision in this section, any action required of a local agency by this section in order to give effect to the Senior Citizens Mobilehome Property Tax Postponement Law (Chapter 3.3 (commencing with Section 20639) of Part 10.5 of Division 2 of the Revenue and Taxation Code, and that has been determined by the Commission on State Mandates to be a reimbursable mandate, shall be optional.

SEC. 50. Section 16320 of the Government Code is amended to read:

16320. (a) Unless otherwise prohibited by law, moneys in the State Treasury may be loaned from one state fund or account to any other state fund or account to address the 2001–02, 2002–03, and 2003–04 fiscal year budgetary shortfalls, subject to all of the following conditions:

(1) The loan is authorized in the 2002 Budget Act, legislation enacted in a 2003–04 Extraordinary Session, or the 2003 Budget Act.

(2) The terms and conditions of the loan, including an interest rate, are set forth in the loan authorization.

(3) The loan is considered part of the balance of the fund or account that received the funds for the purpose of accounting and budgeting, including any determination made pursuant to Section 13307.

(4) The loan is not deducted from the balance of the fund or account from which the loan is made for purposes of calculating a fee or assessment.

(5) A fee or assessment is not increased as a result of a loan.

(6) Moneys loaned under this section are not considered a transfer of resources for purposes of determining the legality of the use of those moneys by the fund or account from which the loan is made or the fund or account that received the loan.

(b) (1) The Director of Finance shall order the repayment of all or a portion of any loan made pursuant to subdivision (a) if he or she determines that either of the following circumstances exists:

(A) The fund or account from which the loan was made has a need for the moneys.

(B) There is no longer a need for the moneys in the fund or account that received the loan.

(2) The Director of Finance shall notify, in writing, the Chairperson of the Joint Legislative Budget Committee within 30 days of ordering the repayment of any of these loans.

(c) On August 1 of each year, the Director of Finance shall report in writing to the Chairperson of the Joint Legislative Budget Committee the balances of these loans as of the preceding June 30.

(d) On February 1 of each year, the Director of Finance shall provide a report on General Fund obligations to the Chairperson of the Joint Legislative Budget Committee and to the chairpersons of the fiscal committees of the Assembly and the Senate. The report shall include both of the following:

(1) An update of the annual August 1 report to the Chairperson of the Joint Legislative Budget Committee on the balances of outstanding loans, as reflected in the preceding Governor's Budget.

(2) A summary and list of loans to the General Fund or obligations for future payment of deferred or suspended expenditures or transfers to any special fund or account and the dates that the loans or obligations are due.

SEC. 51. Section 16351 of the Government Code is amended to read:

16351. (a) When any special fund in the treasury is exhausted, and there is money in the General Fund not required to meet any demand which has accrued or may accrue against it, the Controller shall so report to the Governor and the Treasurer. If the Governor and Treasurer find that the money is not needed in the General Fund, the Governor may order the Controller to transfer that money, or any part thereof, to the special fund in need.

(b) Money transferred pursuant to subdivision (a) shall be returned to the General Fund as soon as there is sufficient money in the special fund to return it.

(c) If sufficient money does not accumulate in the special fund within one year, the amount of money transferred or whatever portion of that amount is in the fund at that time shall be then returned, and the balance, if any, shall be returned thereafter in monthly installments as it accumulates. Any fund which fails to return the full amount of any transfer within one year from and after the transfer is ineligible to receive further transfers until it has returned the full amount.

SEC. 52. Section 16427 of the Government Code is amended to read:

16427. (a) For purposes of this article, ''department'' means the Department of Justice.

(b) The fund is under the control of the department. The department shall maintain accounting records pertaining to the fund, including subsidiary records of individual litigation deposits and the disbursements from the fund.

(c) The department shall file a claim with the Controller to pay out money in the fund to whomever and at the time the department directs. However, if a sum of money in the fund was deposited pursuant to order or direction of the court, that sum shall be paid to whomever and at the time the court directs.

(d) The department shall notify the Department of Finance no later than 15 days after a transfer from the fund.

(e) Any residue remaining in a deposit account after satisfaction of all court-directed claims, or payment of departmental expenditures for that account shall be transferred no later than July 1 of each fiscal year to the General Fund.

(f) The department shall prepare and submit to the chairperson of the Joint Legislative Budget Committee, the chairpersons of the fiscal committees of the Senate and the Assembly, and the Director of Finance, quarterly reports concerning the activity of the fund that detail the number of deposits received, the receipt of interest income, disbursements to claimants, and what amount, if any, was used for the litigation costs of the department.

SEC. 53. Section 23344 of the Government Code is amended to read:

23344. (a) The commission may borrow those moneys as may be necessary to meet its expenses until the costs of the commission have been determined pursuant to Section 23343.

(b) As an alternative to the procedure authorized by subdivision (a), the Controller, upon appropriation by the Legislature from the General Fund, shall loan those moneys as the commission shall determine necessary to meet its expenses until the costs have been determined pursuant to Section 23343. The loan shall be at an interest rate equal to that of the Pooled Money Investment Fund at the time the loan is made.

(c) Loans made pursuant to this section may not exceed a total of four hundred thousand dollars ($400,000) for each commission, and shall be repaid within one year of the date on which the issue of county formation was voted on by the people.

(d) Any repayments on loans made pursuant to this section, including interest, received by the Controller shall be deposited in the General Fund.

(e) If the loans made pursuant to this section are not repaid, the Controller is authorized to reduce the moneys allocated to the county to which the loan was made by an amount equal to the amount that is owed to the state. This reduction shall be made from the subventions made pursuant to Sections 16100 and 16120.

SEC. 54. Section 27297.5 of the Government Code is amended to read:

27297.5. (a) Upon recordation of an abstract of judgment or other document creating an involuntary lien affecting the title to real property, unless the county recorder has received from the judgment creditor proof of service pursuant to subdivision (b) of a copy of the document being recorded, the county recorder may, whenever the recorded document evidencing such lien contains the address of the person or persons against whom the involuntary lien is recorded or the address of the judgment debtor's attorney of record, within 10 days notify the person or persons or attorney of record by mail of the recordation.

(b) As an alternative to notice by the recorder, the judgment creditor or lienholder may serve upon the person or persons against whom the abstract of judgment or document creating an involuntary lien is to be recorded, a copy thereof in one of the following ways:

(1) By personal delivery. Proof of service pursuant to this paragraph shall be shown by the affidavit of the person making the service, showing the time, place, and manner of service, the name and address of the person served, and any other facts necessary to show that service was made in accordance with this paragraph. If there is no address for a person to be served known to the judgment creditor or lienholder, he or she shall append to the abstract of judgment or involuntary lien an affidavit to that effect.

(2) By leaving it at the person's residence or place of business in the care of some person in charge. Proof of service pursuant to this paragraph shall be shown by the affidavit of the person making the service, showing the time, place, and manner of service, the name and address of the person served, together with the title or capacity of the person accepting service, and any other facts necessary to show that service was made in accordance with this paragraph.

(3) By registered or certified mail, postage prepaid, addressed to the person's residence or place of business. This service is complete at the time of mailing. Proof of service pursuant to this paragraph shall be shown by an affidavit setting forth the fact of service, the name and residence or business address of the person making this service, showing that he or she is a resident of, or employed in, the county where the mailing occurs, the fact that he or she is over the age of 18 years, the date and place of deposit in the mail, the name and address of the person served as shown on the envelope, and the fact that the envelope was

sealed and deposited in the mail, with the postage thereon fully prepaid, and sent by registered or certified mail.

(c) The judgment creditor may add the actual cost of service pursuant to subdivision (b) to the judgment or involuntary lien. The costs shall not exceed the cost had the abstract of judgment or involuntary lien been recorded pursuant to subdivision (a).

(d) As used in this section, ''involuntary lien'' means a lien that the person or persons against whom the lien is recorded has not executed or has not consented to by contract.

(e) This section shall not apply to the recordation of any documents relating to an involuntary lien in favor of the federal government pursuant to federal law or statute or to the recordation of any state tax lien against real property.

(f) The failure of the county recorder or a judgment creditor or lienholder to notify the person or persons against whom an abstract of judgment or involuntary lien is recorded as authorized by this section shall not affect the constructive notice otherwise imparted by recordation, nor shall it affect the force, effect, or priority otherwise accorded the lien.

(g) In the event that the notice is returned to the recorder by the postal service as undeliverable, the recorder is not required to retain the returned notice.

(h) In recognition of the state and local interests served by the action made optional in subdivision (a), the Legislature encourages local agencies to continue taking the action formerly mandated by this section. However, nothing in this subdivision may be construed to impose any liability on a local agency that does not continue to take the formerly mandated action.

SEC. 54.5. Section 29550 of the Government Code is amended to read:

29550. (a) (1) Notwithstanding any other provision of law, a county may impose a fee upon a city, special district, school district, community college district, college, or university for reimbursement of county expenses incurred with respect to the booking or other processing of persons arrested by an employee of that city, special district, school district, community college district, college, or university, where the arrested persons are brought to the county jail for booking or detention. The fee imposed by a county pursuant to this section shall not exceed the actual administrative costs, including applicable overhead costs as permitted by federal Circular A-87 standards, as defined in subdivision (d), incurred in booking or otherwise processing arrested persons. For the 2005–06 fiscal year and each fiscal year thereafter, the fee imposed by a county pursuant to this subdivision shall not exceed one-half of the actual administrative costs, including applicable overhead costs as

permitted by federal Circular A-87 standards, as defined in subdivision (d), incurred in booking or otherwise processing arrested persons. A county may submit an invoice to a city, special district, school district, community college district, college, or university for these expenses incurred by the county on and after July 1, 1990. Counties shall fully disclose the costs allocated as federal Circular A-87 overhead.

(2) Any increase in a fee charged pursuant to this section shall be adopted by a county prior to the beginning of its fiscal year and may be adopted only after the county has provided each city, special district, school district, community college district, college, or university 45 days written notice of a public meeting held pursuant to Section 54952.2 on the fee increase and the county has conducted the public meeting.

(3) Any county that imposes a fee pursuant to this section shall negotiate a reduced fee with any city, special district, school district, community college district, college, or university within the county for any services that are performed by the arresting agency in the processing of arrestees that do not have to be duplicated by the county.

(4) This subdivision shall not apply to counties that are under a contractual agreement with a city, special district, school district, community college district, college, or university within the county that is subject to the fee.

(b) The exemption of a local agency from the payment of a fee pursuant to this subdivision does not exempt the person arrested from the payment of fees for booking or other processing.

(1) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests on any bench warrant for failure to appear in court, nor on any arrest warrant issued in connection with a crime not committed within the entity's jurisdiction.

(2) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for a person who is ordered by a court to be remanded to the county jail except that a county may charge a fee to recover those direct costs for those functions required to book a person pursuant to subdivision (g) of Section 853.6 of the Penal Code.

(3) Notwithstanding subdivision (a), a city, special district, school district, community college district, college, or university shall not be charged fees for arrests made pursuant to arrest warrants originating outside of its jurisdiction.

(4) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university on parole violation arrests or probation-ordered returns to custody, unless a new charge has been filed for a crime committed in the jurisdiction of the arresting city, district, college, or university.

(5) An agency making a mutual aid request shall pay fees in accordance with subdivision (a) that result from arrests made in response to the mutual aid request except that in the event the Governor declares a state of emergency, no agency shall be charged fees for any arrest made during any riot, disturbance, or event that is subject to the declaration.

(6) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university for the arrest of a prisoner who has escaped from a county, state, or federal detention or corrections facility.

(7) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university for arrestees held in temporary detention at a court facility for purposes of arraignment when the arrestee has been previously booked at an entity detention facility.

(8) Notwithstanding subdivision (a), no fees shall be charged to a city, special district, school district, community college district, college, or university as the result of an arrest made by its officer assigned to a formal multiagency task force in which the county is a participant. For the purposes of this section, ''formal task force'' means a task force that has been established by written agreement of the participating agencies.

(9) In those counties where the cities and the county participate in a consolidated booking program and where prior to arraignment an arrestee is transferred from a city detention facility to a county detention facility, the city shall not be charged for those tasks listed in subdivision (d) that are a part of the consolidated booking program which were completed by the city prior to delivering the arrestee to the county detention facility. However, the county may charge the actual administrative costs for those additional tasks listed in subdivision (d) that are performed in order to receive the arrestee into the county detention facility. For the 2005-06 fiscal year and each fiscal year thereafter, the county may charge up to one-half of the actual administrative costs for those additional tasks listed in subdivision (d) that are performed in order to receive the arrestee into the county detention facility.

(c) Any county whose officer or agent arrests a person is entitled to recover from the arrested person a criminal justice administration fee for administrative costs it incurs in conjunction with the arrest if the person is convicted of any criminal offense related to the arrest, whether or not it is the offense for which the person was originally booked. The fee which the county is entitled to recover pursuant to this subdivision shall not exceed the actual administrative costs, including applicable overhead costs incurred in booking or otherwise processing arrested persons.

(d) When the court has been notified in a manner specified by the court that a criminal justice administration fee is due the agency:

(1) A judgment of conviction may impose an order for payment of the amount of the criminal justice administration fee by the convicted person, and execution may be issued on the order in the same manner as a judgment in a civil action, but shall not be enforceable by contempt.

(2) The court shall, as a condition of probation, order the convicted person, based on his or her ability to pay, to reimburse the county for the criminal justice administration fee, including applicable overhead costs.

(e) As used in this section, ''actual administrative costs'' include only those costs for functions that are performed in order to receive an arrestee into a county detention facility. Operating expenses of the county jail facility including capital costs and those costs involved in the housing, feeding, and care of inmates shall not be included in calculating ''actual administrative costs.'' ''Actual administrative costs'' may include the cost of notifying any local agency, special district, school district, community college district, college or university of any change in the fee charged by a county pursuant to this section. ''Actual administrative costs'' may include any one or more of the following as related to receiving an arrestee into the county detention facility:

(1) The searching, wristbanding, bathing, clothing, fingerprinting, photographing, and medical and mental screening of an arrestee.

(2) Document preparation, retrieval, updating, filing, and court scheduling related to receiving an arrestee into the detention facility.

(3) Warrant service, processing, and detainer.

(4) Inventory of an arrestee's money and creation of cash accounts.

(5) Inventory and storage of an arrestee's property.

(6) Inventory, laundry, and storage of an arrestee's clothing.

(7) The classification of an arrestee.

(8) The direct costs of automated services utilized in paragraphs (1) to (7), inclusive.

(9) Unit management and supervision of the detention function as related to paragraphs (1) to (8), inclusive.

(f) An administrative screening fee of twenty-five dollars ($25) shall be collected from each person arrested and released on his or her own recognizance upon conviction of any criminal offense related to the arrest other than an infraction. A citation processing fee in the amount of ten dollars ($10) shall be collected from each person cited and released by any peace officer in the field or at a jail facility upon conviction of any criminal offense, other than an infraction, related to the criminal offense cited in the notice to appear. However, the court may determine a lesser fee than otherwise provided in this subdivision upon a showing that the defendant is unable to pay the full amount. All fees collected pursuant to this subdivision shall be transmitted by the county auditor monthly

to the Controller for deposit in the General Fund. This subdivision applies only to convictions occurring on or after the effective date of the act adding this subdivision and prior to June 30, 1996.

SEC. 55. Section 29550.4 of the Government Code is amended to read:

29550.4. (a) (1) Notwithstanding Section 13340, the sum of up to fifty million dollars ($50,000,000) is hereby continuously appropriated annually from the General Fund to the Controller commencing with the 1999–2000 fiscal year for allocation to cities and qualified special districts for reimbursement for actual costs incurred by cities and qualified special districts in the payment of booking and processing fees pursuant to this article. For the 1999–2000 fiscal year, this appropriation shall be allocated to cities and qualified special districts for reimbursement for actual costs incurred by them during the period July 1, 1997, to July 1, 1998. If the actual costs incurred by cities and qualified special districts during the period of July 1, 1997, to July 1, 1998, in the payment to counties of booking and processing fees is greater than fifty million dollars ($50,000,000), then the Controller shall prorate the reimbursement to each city and qualified special district accordingly.

(2) For the 2004–05 fiscal year, no county shall assess a booking or processing fee pursuant to this article in excess of the fee in place on January 1, 2004.

(b) Not later than December 1, 1999, the Controller shall allocate the funds appropriated pursuant to subdivision (a) to all qualified cities and qualified special districts and shall certify to the Director of Finance the actual amount of money allocated to cities and qualified special districts for the payment of booking and processing fees pursuant to subdivision (a).

(c) Notwithstanding any other provision of this article, any city that pays booking and processing fees to another city is eligible for reimbursement pursuant to this section on the same basis as a city that pays booking and processing fees to a county. The amount of reimbursement for a city shall be based on the processing fees charged by the county in which that city is located. This subdivision shall apply to reimbursements beginning in the 2000–01 fiscal year based on costs incurred in the 1997–98 fiscal year.

(d) Any city or qualified special district that applies for reimbursement pursuant to this section shall comply with all requests made by the Controller. Any city or qualified special district that contracts with a county for the payment of those fees shall be ineligible for reimbursement pursuant to this section. A city that has entered into a memorandum of understanding with its county effective May 17, 1994, which agreement allows for the payment of prepaid annual rent to

satisfy the city's booking fee obligation, shall be eligible to receive reimbursement pursuant to this section.

(e) Any qualified city that did not apply for reimbursement pursuant to this section at the time required to receive funds allocated by the Controller not later than December 1, 1999, in the 1999–2000 fiscal year may apply for that reimbursement by October 1, 2000. Any qualified special district may apply to the Controller for reimbursement pursuant to this section for the 1999–2000 fiscal year by October 1, 2000.

(f) For the purposes of this section, ''qualified special district'' means both of the following:

(1) A district that supplants the law enforcement functions of the county within the jurisdiction of that district.

(2) A district that employs peace officers, as described in Section 830.1 of the Penal Code, who are certified as meeting those standards and requirements established pursuant to Article 2 (commencing with Section 13510) of Chapter 1 of Title 4 of Part 4 of the Penal Code.

(g) This section shall become inoperative on July 1, 2005, and, as of January 1, 2006, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2006, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 55.5. Section 30070 of the Government Code is amended to read:

30070. (a) The sum of eighteen million five hundred thousand dollars ($18,500,000) is hereby annually appropriated from the General Fund to the Controller for allocation to county sheriffs' departments to enhance law enforcement efforts in the counties specified in paragraphs (1) to (37), inclusive, according to the following schedule:

(1) Alpine County	500,000
(2) Amador County	500,000
(3) Butte County	500,000
(4) Calaveras County	500,000
(5) Colusa County	500,000
(6) Del Norte County	500,000
(7) El Dorado County	500,000
(8) Glenn County	500,000
(9) Humboldt County	500,000
(10) Imperial County	500,000
(11) Inyo County	500,000
(12) Kings County	500,000
(13) Lake County	500,000
(14) Lassen County	500,000
(15) Madera County	500,000

(16) Marin County	500,000
(17) Mariposa County	500,000
(18) Mendocino County	500,000
(19) Merced County	500,000
(20) Modoc County	500,000
(21) Mono County	500,000
(22) Napa County	500,000
(23) Nevada County	500,000
(24) Placer County	500,000
(25) Plumas County	500,000
(26) San Benito County	500,000
(27) San Luis Obispo County	500,000
(28) Santa Cruz County	500,000
(29) Shasta County	500,000
(30) Sierra County	500,000
(31) Siskiyou County	500,000
(32) Sutter County	500,000
(33) Tehama County	500,000
(34) Trinity County	500,000
(35) Tuolumne County	500,000
(36) Yolo County	500,000
(37) Yuba County	500,000

(b) Funds allocated pursuant to this section shall be used to supplement rather than supplant existing law enforcement resources.

(c) The appropriation and allocation of funds to county sheriffs' departments under this section shall be suspended for the 2003–04 fiscal year.

SEC. 56. Section 63021.5 of the Government Code is amended to read:

63021.5. (a) The bank shall be governed and its corporate power exercised by a board of directors that shall consist of the following persons:

(1) The Director of Finance or his or her designee.

(2) The Treasurer or his or her designee.

(3) The Secretary of Business, Transportation and Housing or his or her designee, who shall serve as chair of the board.

(4) An appointee of the Governor.

(5) The Secretary of State and Consumer Services Agency or his or her designee.

(b) Any designated director shall serve at the pleasure of the designating power.

(c) Three of the members shall constitute a quorum and the affirmative vote of three board members shall be necessary for any action to be taken by the board.

(d) A member of the board shall not participate in any bank action or attempt to influence any decision or recommendation by any employee of, or consultant to, the bank that involves a sponsor of which he or she is a representative or in which the member or a member of his or her immediate family has a personal financial interest within the meaning of Section 87100. For purposes of this section, ''immediate family'' means the spouse, children, and parents of the member.

(e) Except as provided in this subdivision, the members of the board shall serve without compensation, but shall be reimbursed for actual and necessary expenses incurred in the performance of their duties to the extent that reimbursement for these expenses is not otherwise provided or payable by another public agency, and shall receive one hundred dollars ($100) for each full day of attending meetings of the authority.

SEC. 57. Section 65583 of the Government Code is amended to read:

65583. The housing element shall consist of an identification and analysis of existing and projected housing needs and a statement of goals, policies, quantified objectives, financial resources, and scheduled programs for the preservation, improvement, and development of housing. The housing element shall identify adequate sites for housing, including rental housing, factory-built housing, and mobilehomes, and shall make adequate provision for the existing and projected needs of all economic segments of the community. The element shall contain all of the following:

(a) An assessment of housing needs and an inventory of resources and constraints relevant to the meeting of these needs. The assessment and inventory shall include all of the following:

(1) An analysis of population and employment trends and documentation of projections and a qualification of the locality's existing and projected housing needs for all income levels. These existing and projected needs shall include the locality's share of the regional housing need in accordance with Section 65584.

(2) An analysis and documentation of household characteristics, including level of payment compared to ability to pay, housing characteristics, including overcrowding, and housing stock condition.

(3) An inventory of land suitable for residential development, including vacant sites and sites having potential for redevelopment, and an analysis of the relationship of zoning and public facilities and services to these sites.

(4) An analysis of potential and actual governmental constraints upon the maintenance, improvement, or development of housing for all

income levels and for persons with disabilities as identified in the analysis pursuant to paragraph (6), including land use controls, building codes and their enforcement, site improvements, fees and other exactions required of developers, and local processing and permit procedures. The analysis shall also demonstrate local efforts to remove governmental constraints that hinder the locality from meeting its share of the regional housing need in accordance with Section 65584 and from meeting the need for housing for persons with disabilities identified pursuant to paragraph (6).

(5) An analysis of potential and actual nongovernmental constraints upon the maintenance, improvement, or development of housing for all income levels, including the availability of financing, the price of land, and the cost of construction.

(6) An analysis of any special housing needs, such as those of the elderly, persons with disabilities, large families, farmworkers, families with female heads of households, and families and persons in need of emergency shelter. The department shall adopt regulations to implement this paragraph, including parts of this paragraph determined by the department or any other state agency or a court to be a reimbursable state mandate. For any revision of a housing element required pursuant to Section 65588 that occurs subsequent to the adoption of those regulations, any actions undertaken by the locality beyond those specified in the regulations are at that locality's option and are not required by this section.

(7) At the option of local government, an analysis of opportunities for energy conservation with respect to residential development.

(8) An analysis of existing assisted housing developments that are eligible to change from low-income housing uses during the next 10 years due to termination of subsidy contracts, mortgage prepayment, or expiration of restrictions on use. ''Assisted housing developments,'' for the purpose of this section, shall mean multifamily rental housing that receives governmental assistance under federal programs listed in subdivision (a) of Section 65863.10, state and local multifamily revenue bond programs, local redevelopment programs, the federal Community Development Block Grant Program, or local in-lieu fees. ''Assisted housing developments'' shall also include multifamily rental units that were developed pursuant to a local inclusionary housing program or used to qualify for a density bonus pursuant to Section 65916.

(A) The analysis shall include a listing of each development by project name and address, the type of governmental assistance received, the earliest possible date of change from low-income use and the total number of elderly and nonelderly units that could be lost from the locality's low-income housing stock in each year during the 10-year period. For purposes of state and federally funded projects, the analysis

required by this subparagraph need only contain information available on a statewide basis.

(B) The analysis shall estimate the total cost of producing new rental housing that is comparable in size and rent levels, to replace the units that could change from low-income use, and an estimated cost of preserving the assisted housing developments. This cost analysis for replacement housing may be done aggregately for each five-year period and does not have to contain a project-by-project cost estimate.

(C) The analysis shall identify public and private nonprofit corporations known to the local government which have legal and managerial capacity to acquire and manage these housing developments.

(D) The analysis shall identify and consider the use of all federal, state, and local financing and subsidy programs which can be used to preserve, for lower income households, the assisted housing developments, identified in this paragraph, including, but not limited to, federal Community Development Block Grant Program funds, tax increment funds received by a redevelopment agency of the community, and administrative fees received by a housing authority operating within the community. In considering the use of these financing and subsidy programs, the analysis shall identify the amounts of funds under each available program which have not been legally obligated for other purposes and which could be available for use in preserving assisted housing developments.

(b) (1) A statement of the community's goals, quantified objectives, and policies relative to the maintenance, preservation, improvement, and development of housing.

(2) It is recognized that the total housing needs identified pursuant to subdivision (a) may exceed available resources and the community's ability to satisfy this need within the content of the general plan requirements outlined in Article 5 (commencing with Section 65300). Under these circumstances, the quantified objectives need not be identical to the total housing needs. The quantified objectives shall establish the maximum number of housing units by income category that can be constructed, rehabilitated, and conserved over a five-year time period.

(c) A program which sets forth a five-year schedule of actions the local government is undertaking or intends to undertake to implement the policies and achieve the goals and objectives of the housing element through the administration of land use and development controls, provision of regulatory concessions and incentives, and the utilization of appropriate federal and state financing and subsidy programs when available and the utilization of moneys in a low- and moderate-income housing fund of an agency if the locality has established a redevelopment project area pursuant to the Community Redevelopment Law (Division

24 (commencing with Section 33000) of the Health and Safety Code). In order to make adequate provision for the housing needs of all economic segments of the community, the program shall do all of the following:

(1) (A) Identify adequate sites which will be made available through appropriate zoning and development standards and with services and facilities, including sewage collection and treatment, domestic water supply, and septic tanks and wells, needed to facilitate and encourage the development of a variety of types of housing for all income levels, including multifamily rental housing, factory-built housing, mobilehomes, housing for agricultural employees, emergency shelters, and transitional housing in order to meet the community's housing goals as identified in subdivision (b).

(i) Where the inventory of sites, pursuant to paragraph (3) of subdivision (a), does not identify adequate sites to accommodate the need for groups of all household income levels pursuant to Section 65584, the program shall provide for sufficient sites with zoning that permits owner-occupied and rental multifamily residential use by right, including density and development standards that could accommodate and facilitate the feasibility of housing for very low and low-income households.

(ii) Where the inventory of sites pursuant to paragraph (3) of subdivision (a) does not identify adequate sites to accommodate the need for farmworker housing, the program shall provide for sufficient sites to meet the need with zoning that permits farmworker housing use by right, including density and development standards that could accommodate and facilitate the feasibility of the development of farmworker housing for low- and very low income households.

(B) For purposes of this paragraph, the phrase ''use by right'' shall mean the use does not require a conditional use permit, except when the proposed project is a mixed-use project involving both commercial or industrial uses and residential uses. Use by right for all rental multifamily residential housing shall be provided in accordance with subdivision (f) of Section 65589.5.

(C) The requirements of this subdivision regarding identification of sites for farmworker housing shall apply commencing with the next revision of housing elements required by Section 65588 following the enactment of this subparagraph.

(2) Assist in the development of adequate housing to meet the needs of low- and moderate-income households.

(3) Address and, where appropriate and legally possible, remove governmental constraints to the maintenance, improvement, and development of housing, including housing for all income levels and housing for persons with disabilities. The program shall remove

constraints to, or provide reasonable accommodations for housing designed for, intended for occupancy by, or with supportive services for, persons with disabilities.

(4) Conserve and improve the condition of the existing affordable housing stock, which may include addressing ways to mitigate the loss of dwelling units demolished by public or private action.

(5) Promote housing opportunities for all persons regardless of race, religion, sex, marital status, ancestry, national origin, color, familial status, or disability.

(6) (A) Preserve for lower income households the assisted housing developments identified pursuant to paragraph (8) of subdivision (a). The program for preservation of the assisted housing developments shall utilize, to the extent necessary, all available federal, state, and local financing and subsidy programs identified in paragraph (8) of subdivision (a), except where a community has other urgent needs for which alternative funding sources are not available. The program may include strategies that involve local regulation and technical assistance.

(B) The program shall include an identification of the agencies and officials responsible for the implementation of the various actions and the means by which consistency will be achieved with other general plan elements and community goals. The local government shall make a diligent effort to achieve public participation of all economic segments of the community in the development of the housing element, and the program shall describe this effort.

(d) The analysis and program for preserving assisted housing developments required by the amendments to this section enacted by the Statutes of 1989 shall be adopted as an amendment to the housing element by July 1, 1992.

(e) Failure of the department to review and report its findings pursuant to Section 65585 to the local government between July 1, 1992, and the next periodic review and revision required by Section 65588, concerning the housing element amendment required by the amendments to this section by the Statutes of 1989, shall not be used as a basis for allocation or denial of any housing assistance administered pursuant to Part 2 (commencing with Section 50400) of Division 31 of the Health and Safety Code.

SEC. 58. Section 65584.1 is added to the Government Code, to read:

65584.1. Councils of government may charge a fee to local governments to cover the projected reasonable, actual costs of the council in distributing regional housing needs pursuant to this article. Any fee shall not exceed the estimated amount required to implement its obligations under this article. A city, county, or city and county may charge a fee, including, but not limited to, a fee pursuant to Section 65104 to support the work of the planning agency pursuant to this article,

and to reimburse it for the cost of any fee charged by the council of government to cover the council's actual costs in distributing regional housing needs. The legislative body of the city, county, or city and county shall impose any fee pursuant to Section 66016. This section is declaratory of existing law.

SEC. 59. Section 65584.2 is added to the Government Code, to read:

65584.2. A local government may, but is not required to, conduct a review or appeal regarding allocation data provided by the department or the council of governments pertaining the locality's share of the regional housing need or the submittal of data or information for a proposed allocation, as permitted by this article.

SEC. 60. Section 68511.8 is added to the Government Code, to read:

68511.8. (a) On or before December 1 of each year until project completion, the Judicial Council shall provide an annual status report to the chairperson of the budget committee in each house of the Legislature and the chairperson of the Joint Legislative Budget Committee with regard to the California Case Management System and Court Accounting and Reporting System. The report shall include, but is not limited to, all of the following:

(1) Project accomplishments to date.

(2) Project activities underway.

(3) Proposed activities.

(4) Annual revenues and expenditures to date in support of these projects, which shall include all costs for the Administrative Office of the Courts and incremental court personnel, contracts, and hardware and software.

(b) On or before December 1 of each year until project completion, the Administrative Office of the Courts shall provide, on an annual basis to the chairperson of the budget committee in each house of the Legislature and the chairperson of the Joint Legislative Budget Committee, copies of any independent project oversight report for the California Case Management System. The independent project oversight report shall include, but is not limited to, a review and an assessment of project activities, identification of deficiencies, and recommendations to the Administrative Office of the Courts on how to address those deficiencies. The Administrative Office of the Courts shall include in the annual submission descriptions on actions taken to address identified deficiencies.

(c) Within 18 months of fully implementing the California Case Management System and the Court Accounting and Reporting System projects, the Administrative Office of the Courts shall provide to the chairperson of the budget committee in each house of the Legislature and the chairperson of the Joint Legislative Budget Committee, a postimplementation evaluation report for each project. The report shall

include, but is not limited to, a summary of the project background, project results, and an assessment of the attainment of project objectives.

SEC. 61. Section 69926.5 of the Government Code is amended to read:

69926.5. (a) To ensure and maintain adequate funding for court security, a surcharge of twenty dollars ($20) is added to the total fee collected pursuant to Section 26820.4, 26826, 26827, 72055, or 72056.

(b) In addition to the surcharge in subdivision (a), a surcharge of twenty dollars ($20) is added to the total filing fee collected in a case pursuant to Section 26820.4, 26826, or 26827, a surcharge of twenty dollars ($20) is added to the total filing fee collected in a limited civil case pursuant to Section 72055 or 72056 where the amount demanded, excluding attorney's fees and costs, is in excess of ten thousand dollars ($10,000), and a surcharge of ten dollars ($10) is added to the total filing fee collected in a limited civil case pursuant to Section 72055 or 72056 where the amount demanded, excluding attorney's fees and costs, is ten thousand dollars ($10,000), or less. The surcharges in this subdivision shall be collected in cases filed from January 1, 2004, to June 30, 2005, inclusive. The purpose of this surcharge is to stabilize funding for court security at the current level and is not intended to increase the funding available for court security in the 2004–05 fiscal year. This subdivision shall become inoperative on July 1, 2005, or upon the enactment of a uniform filing fee, whichever is earlier.

(c) Notwithstanding any other provision of law, the surcharges collected pursuant to subdivisions (a) and (b) shall all be deposited in a special account in the county treasury, and transmitted therefrom monthly to the Controller for deposit in the Trial Court Trust Fund.

SEC. 62. Section 69957 of the Government Code is amended to read:

69957. Whenever an official reporter or an official reporter pro tempore is unavailable to report an action or proceeding in a court, subject to the availability of approved equipment and equipment monitors, the court may order that, in a limited civil case, or a misdemeanor or infraction case, the action or proceeding be electronically recorded, including all the testimony, the objections made, the ruling of the court, the exceptions taken, all arraignments, pleas, and sentences of defendants in criminal cases, the arguments of the attorneys to the jury, and all statements and remarks made and oral instructions given by the judge. A transcript derived from an electronic recording may be utilized whenever a transcript of court proceedings is required. The electronic recording device and appurtenant equipment shall be of a type approved by the Judicial Council for courtroom use and shall only be purchased for use as provided by this section. A court shall not expend funds for electronic recording technology or equipment to

make an unofficial record of an action or proceeding or to use that technology or equipment to make the official record of an action or proceeding in circumstances not authorized by this section.

SEC. 63. Section 69958 is added to the Government Code, to read:

69958. Each superior court shall report to the Judicial Council on or before October 1, 2004, and semiannually thereafter, and the Judicial Council shall report to the Legislature on or before December 31, 2004, and semiannually thereafter, regarding all purchases and leases of electronic recording equipment that will be used to record superior court proceedings, specifying all of the following:

(a) The Superior Court in which the equipment will be used.

(b) The types of trial court proceedings in which the equipment will be used.

(c) The cost of purchasing, leasing, or upgrading the equipment.

(d) The type of equipment purchased or leased.

SEC. 64. 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 either of the following:

(1) Any organization that includes trial court employees and has as one of its primary purposes representing those employees in their relations with that trial court.

(2) Any organization that seeks to represent trial court employees in their relations with that 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. 65. Section 71630 of the Government Code is amended to read:

71630. (a) It is the purpose of this article to promote full communication between trial courts and their employees by providing a reasonable method for resolving disputes regarding wages, hours, and other terms and conditions of employment between trial courts and recognized employee organizations. It is also the purpose of this article to promote the improvement of personnel management and employer-employee relations within the trial courts in the state by providing a uniform basis for recognizing the right of trial court employees to join organizations of their own choice and to be represented by those organizations in their employment relations with trial courts. It is also the purpose of this article to extend to trial court employees the right, and to require trial courts, to meet and confer in good faith over matters within the scope of representation, consistent with the procedures set forth in this article. This article is not intended to require changes in existing representation units, memoranda of agreement or understanding, or court rules, except as provided in this article.

(b) The Legislature finds and declares that the duties and responsibilities of trial court representatives under this article are substantially similar to the duties and responsibilities required under existing collective bargaining enforcement procedures and therefore the costs incurred by the trial court representatives in performing those duties and responsibilities under this article are not reimbursable as state-mandated costs.

SEC. 66. Section 71636 of the Government Code is amended to read:

71636. (a) A trial court may adopt reasonable rules and regulations, after consultation in good faith with representatives of a recognized employee organization or organizations, for the administration of employer-employee relations under this article. These rules and regulations may include provisions for:

(1) Verifying that an organization does in fact represent employees of the trial court.

(2) Verifying the official status of employee organization officers and representatives.

(3) Recognition of employee organizations.

(4) Exclusive recognition of employee organizations formally recognized pursuant to a vote of the employees of the trial court or an appropriate unit thereof, subject to the right of an employee to represent himself or herself as provided in Section 71631.

(5) Additional procedures for the resolution of disputes involving wages, hours, and other terms and conditions of employment.

(6) Access of employee organization officers and representatives to work locations.

(7) Use of official bulletin boards and other means of communication by employee organizations.

(8) Furnishing nonconfidential information pertaining to employment relations to employee organizations.

(9) Any other matters as are necessary to carry out the purposes of this article.

(b) Exclusive recognition of employee organizations formally recognized as majority representatives pursuant to a vote of the employees may be revoked by a majority vote of the employees only after a period of not less than 12 months following the date of recognition.

(c) No trial court shall unreasonably withhold recognition of employee organizations. A trial court may not offer to provide employees benefits of any kind for the purpose of inducing those employees to decertify or withdraw support from a recognized employee organization.

(d) Pursuant to the obligation to meet and confer in good faith, the trial court shall establish procedures to determine the appropriateness of any bargaining unit of court employees.

(e) Trial court employees and employee organizations shall be able to challenge a rule or regulation of a trial court as a violation of this chapter.

SEC. 67. Section 71639.1 of the Government Code is repealed.

SEC. 68. Section 71639.1 is added to the Government Code, to read:

71639.1. (a) As used in this article, ''board'' means the Public Employment Relations Board established pursuant to Section 3541.

(b) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this article and shall include the authority as set forth in subdivisions (c) and (d). Included among the appropriate powers of the board are the power to order elections, to

conduct any election the board orders, and to adopt rules to apply in areas where a trial court has no rule.

(c) A complaint alleging any violation of this article or of any rules and regulations adopted by a trial court pursuant to Section 71636 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this article, shall be a matter within the exclusive jurisdiction of the board. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this article and Section 71639.3. The board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, except that if the rules and regulations adopted by a trial court require exhaustion of a remedy prior to filing an unfair practice charge or the charging party chooses to exhaust a trial court's remedy prior to filing an unfair practice charge, the six-month limitation set forth in this subsection shall be tolled during such reasonable amount of time it takes the charging party to exhaust the remedy, but nothing herein shall require a charging party to exhaust a remedy when that remedy would be futile.

(d) The board shall enforce and apply rules adopted by a trial court concerning unit determinations, representation, recognition, and elections.

(e) This section does not apply to employees designated as management employees under Section 71637.1.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a trial court if that rule or regulation is itself in violation of this article.

SEC. 69. Section 71639.3 of the Government Code is amended to read:

71639.3. Trial courts and trial court employees are not covered by Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, or any subsequent changes to these sections except as provided in this article. However, where the language of this article is the same or substantially the same as that contained in Chapter 10 (commencing with Section 3500) of Division 4 of Title 1, it shall be interpreted and applied in accordance with the judicial interpretations of the same language.

SEC. 70. Section 71639.4 is added to the Government Code, to read:

71639.4. (a) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, and any party to a final decision or order of the board in a unit determination, representation, recognition, or election matter that is not

brought as an unfair practice case, may petition for a writ of extraordinary relief from that decision or order. A board order directing an election may not be stayed pending judicial review.

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision or order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

(c) If the time to petition for extraordinary relief from a board decision or order has expired, the board may seek enforcement of any final decision or order in a district court of appeal or superior court having jurisdiction over the county where the events giving rise to the decision or order occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to the procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus or other proper process. The court may not review the merits of the order.

SEC. 71. Section 71639.5 is added to the Government Code, to read:

71639.5. (a) Any written agreements reached through negotiations held pursuant to this article are binding upon the parties, upon adoption under Section 71634.3, and, notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior

tribunal, any of those agreements may be enforced by petitioning the superior court for relief pursuant to Section 1085 or 1103 of the Code of Civil Procedure.

(b) Written agreements reached through negotiations held pursuant to this article that contain provisions requiring the arbitration of controversies arising out of the agreement shall be subject to enforcement under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(c) The Judicial Council shall adopt rules of court that shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear petitions under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, and writ applications under Sections 1085 and 1103 of the Code of Civil Procedure, and as specified in those rules, from which a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court, and to the extent permitted by law, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of appeal district in which the action is filed, and shall further provide that appeals in such matters shall be heard in the court of appeal district where the matter was filed.

SEC. 72. Section 71823 of the Government Code is amended to read:

71823. (a) On or before April 1, 2003, the regional court interpreter employment relations committee shall adopt reasonable rules and regulations for the administration of employer-employee relations under this chapter, which shall be binding on the trial courts within the region. These rules shall include provisions for all of the following:

(1) Verification that an organization represents employees of the trial courts within the applicable region.

(2) Verification of the official status of employee organization officers and representatives.

(3) Registration of employee organizations and recognition of these organizations as representatives of interpreters employed by the trial courts in the region.

(4) Establishment of a single, regional bargaining unit of all court interpreters employed by the trial courts in the region, including court interpreters pro tempore.

(5) Recognition of an employee organization as the exclusive representative of all court interpreters employed by the trial courts in the region, subject to the right of a court interpreter to represent himself or herself, as provided in Section 71813, upon either of the following:

(A) Presentation of a petition or cards with the signatures of 50 percent plus one of the court interpreters employed by the trial courts in

the region during the payroll period immediately prior to the presentation of the cards or petition, including court interpreters pro tempore, regardless of whether they have been appointed to interpret during that payroll period, if they have worked for the trial courts as independent contractors or employees for at least 15 days in the six months prior to the filing of the petition or cards with those signatures having been obtained within one year prior to presentation of the petition or cards. A signature shall be valid even if the interpreter was not yet an employee at the time the petition or card was signed if the interpreter had previously performed work for the trial courts as an independent contractor, provided that the signature was obtained no more than 90 days before the interpreter became an employee. The results of a request for recognition under this provision shall be certified within 10 days after presentation of the cards or petition.

(B) Receipt by the employee organization of 50 percent plus one of the votes cast at a secret ballot representation election conducted by mail. A representation election shall be held within 30 days after presentation of a 30-percent or greater showing of interest from employees eligible to vote in the representation election by means of a petition or cards supported by signatures obtained within one year prior to the presentation of the petitions or cards. A signature shall be valid even if the interpreter was not yet an employee at the time the petition or card was signed if the interpreter had previously performed work for the trial courts as an independent contractor, provided that the signature was obtained no more than 90 days before the interpreter became an employee. All certified and registered interpreters employed by the trial courts in the payroll period immediately prior to the election, including court interpreters pro tempore, shall be eligible to vote in the election, regardless of whether they have been appointed to interpret during that payroll period, so long as they have worked for the trial courts as independent contractors or employees for at least 15 days in the six months prior to the filing of the petition or cards. A list of eligible voters shall be provided to the employee organization within 10 days after submission of the petition or cards. Certification of the results of a representation election shall occur within 30 days after the election is concluded.

(6) Procedures for the resolution of disputes involving wages, hours, and other terms and conditions of employment.

(7) Access of employee organization officers and representatives to work locations.

(8) Use of official bulletin boards and other means of communication by employee organizations.

(9) Furnishing nonconfidential information pertaining to employment relations to an employee organization.

(10) Revocation of recognition of an employee organization formally recognized as majority representative pursuant to a vote of the employees by a majority vote of the employees only after a period of not less than 12 months following the date of recognition. A vote shall be requested by a petition or cards signed by at least 30 percent of the employees within the bargaining unit, with those signatures having been obtained within one year prior to presentation of the petition or cards.

(11) Any other matters that are necessary to carry out the purposes of this chapter.

(b) If there is a recognized employee organization in the region, the regional court interpreter employment relations committee may amend the reasonable rules and regulations adopted pursuant to subdivision (a) by adopting reasonable rules and regulations, after meeting and conferring in good faith, for the administration of employer-employee relations under this chapter, which shall be binding on the trial courts within the region.

(c) Interpreters and recognized employee organizations shall be able to challenge a rule or regulation of the regional court interpreter employment relations committee or a trial court as a violation of this chapter.

SEC. 73. Section 71825 of the Government Code is repealed.

SEC. 74. Section 71825 is added to the Government Code, to read:

71825. (a) As used in this section, ''board'' means the Public Employment Relations Board established pursuant to Section 3541.

(b) The powers and duties of the board described in Section 3541.3 shall also apply, as appropriate, to this chapter and shall include the authority as set forth in subdivisions (c) and (d). Included among the appropriate powers of the board are the power to order elections, to conduct any election the board orders, and to adopt rules to apply in areas where a regional court interpreter employment relations committee has no rule.

(c) A complaint alleging any violation of this chapter or of any rules and regulations adopted by a regional court interpreter employment relations committee pursuant to Section 71823 shall be processed as an unfair practice charge by the board. The initial determination as to whether the charge of unfair practice is justified and, if so, the appropriate remedy necessary to effectuate the purposes of this chapter, shall be a matter within the exclusive jurisdiction of the board. The board shall apply and interpret unfair labor practices consistent with existing judicial interpretations of this chapter and Section 71826(b). The board shall not issue a complaint in respect of any charge based upon an alleged unfair practice occurring more than six months prior to the filing of the charge, except that if the rules and regulations adopted by a regional court interpreter employment relations committee require exhaustion of

a remedy prior to filing an unfair practice charge or the charging party chooses to exhaust a regional court interpreter employment relations committee's remedy prior to filing an unfair practice charge, the six-month limitation set forth in this subsection shall be tolled during such reasonable amount of time it takes the charging party to exhaust the remedy, but nothing herein shall require a charging party to exhaust a remedy when that remedy would be futile.

(d) The board shall enforce and apply rules adopted by a regional court interpreter employment relations committee concerning unit determinations, representation, recognition, and elections.

(e) This section does not apply to employees designated as management employees.

(f) The board shall not find it an unfair practice for an employee organization to violate a rule or regulation adopted by a regional court interpreter employment relations committee if that rule or regulation is itself in violation of this chapter.

SEC. 75. Section 71825.1 is added to the Government Code, to read:

71825.1. (a) Any charging party, respondent, or intervenor aggrieved by a final decision or order of the board in an unfair practice case, except a decision of the board not to issue a complaint in such a case, and any party to a final decision or order of the board in a unit determination, representation, recognition, or election matter that is not brought as an unfair practice case, may petition for a writ of extraordinary relief from that decision or order. A board order directing an election may not be stayed pending judicial review.

(b) A petition for a writ of extraordinary relief shall be filed in the district court of appeal having jurisdiction over the county where the events giving rise to the decision or order occurred. The petition shall be filed within 30 days from the date of the issuance of the board's final decision or order, or order denying reconsideration, as applicable. Upon the filing of the petition, the court shall cause notice to be served upon the board and thereafter shall have jurisdiction of the proceeding. The board shall file in the court the record of the proceeding, certified by the board, within 10 days after the clerk's notice unless that time is extended by the court for good cause shown. The court shall have jurisdiction to grant any temporary relief or restraining order it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as modified, or setting aside in whole or in part the decision or order of the board. The findings of the board with respect to questions of fact, including ultimate facts, if supported by substantial evidence on the record considered as a whole, shall be conclusive. Title 1 (commencing with Section 1067) of Part 3 of the Code of Civil Procedure relating to writs shall, except where specifically superseded by this section, apply to proceedings pursuant to this section.

(c) If the time to petition for extraordinary relief from a board decision or order has expired, the board may seek enforcement of any final decision or order in a district court of appeal or superior court having jurisdiction over the county where the events giving rise to the decision or order occurred. The board shall respond within 10 days to any inquiry from a party to the action as to why the board has not sought court enforcement of the final decision or order. If the response does not indicate that there has been compliance with the board's final decision or order, the board shall seek enforcement of the final decision or order upon the request of the party. The board shall file in the court the record of the proceeding, certified by the board, and appropriate evidence disclosing the failure to comply with the decision or order. If, after hearing, the court determines that the order was issued pursuant to the procedures established by the board and that the person or entity refuses to comply with the order, the court shall enforce the order by writ of mandamus or other proper process. The court may not review the merits of the order.

SEC. 76. Section 71825.2 is added to the Government Code, to read:

71825.2. (a) Any written agreements reached through negotiations held pursuant to this article are binding upon the parties, upon adoption under Section 71819, and, notwithstanding Sections 1085 and 1103 of the Code of Civil Procedure requiring the issuance of a writ to an inferior tribunal, any of those agreements may be enforced by petitioning the superior court for relief pursuant to Section 1085 or 1103 of the Code of Civil Procedure.

(b) Written agreements reached through negotiations held pursuant to this article that contain provisions requiring the arbitration of controversies arising out of the agreement, shall be subject to enforcement under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure.

(c) The Judicial Council shall adopt rules of court that shall provide a mechanism for the establishment of a panel of court of appeal justices who shall be qualified to hear petitions under Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure, and writ applications under Sections 1085 and 1103 of the Code of Civil Procedure, and as specified in those rules, from which a single justice shall be assigned to hear the matter in the superior court. The rules of court shall provide that these matters shall be heard in the superior court and, to the extent permitted by law, shall provide that any justice assigned to hear the matter in the superior court shall not be from the court of appeal district in which the action is filed, and shall further provide that appeals in those matters shall be heard in the court of appeal district where the matter was filed.

SEC. 77. Section 77202 of the Government Code is amended to read:

77202. (a) The Legislature shall make an annual appropriation to the Judicial Council for the general operations of the trial courts based on the request of the Judicial Council. The Judicial Council's trial court budget request, which shall be submitted to the Governor and the Legislature, shall meet the needs of all trial courts in a manner that ensures a predictable fiscal environment for labor negotiations in accordance with the Trial Court Employment Protection and Governance Act, that promotes equal access to the courts statewide, and that promotes court financial accountability. The annual budget request shall include the following components:

(1) In order to ensure that trial court funding is not eroded and that sufficient funding is provided to trial courts to be able to accommodate increased costs without degrading the quantity or quality of court services, a base funding adjustment for operating costs shall be included that is computed based upon the year-to-year percentage change in the annual state appropriations limit. For purposes of this adjustment, operating costs include, but are not limited to, all expenses for court operations and court employee salaries and salary-driven benefits, but do not include the costs of compensation for judicial officers, subordinate judicial officers, or funding for the assigned judges program.

(2) Nondiscretionary costs necessitated by law or county government that exceed the annual state appropriations limit and other adjustments required to accommodate other operational and programmatic changes shall be separately identified and justified through the annual budget process.

(b) The Judicial Council shall allocate the appropriation to the trial courts in a manner that best ensures the ability of the courts to carry out their functions, promotes implementation of statewide policies, and promotes the immediate implementation of efficiencies and cost-saving measures in court operations, in order to guarantee access to justice to citizens of the state.

The Judicial Council shall ensure that its trial court budget request and the allocations made by it reward each trial court's implementation of efficiencies and cost-saving measures.

These efficiencies and cost-saving measures shall include, but not be limited to, the following:

(1) The sharing or merger of court support staff among trial courts across counties.

(2) The assignment of any type of case to a judge for all purposes commencing with the filing of the case and regardless of jurisdictional boundaries.

(3) The establishment of a separate calendar or division to hear a particular type of case.

(4) In rural counties, the use of all court facilities for hearings and trials of all types of cases and the acceptance of filing documents in any case.

(5) The use of alternative dispute resolution programs, such as arbitration.

(6) The development and use of automated accounting and case-processing systems.

(c) (1) The Judicial Council shall adopt policies and procedures governing practices and procedures for budgeting in the trial courts in a manner that best ensures the ability of the courts to carry out their functions and may delegate the adoption to the Administrative Director of the Courts. The Administrative Director of the Courts shall establish budget procedures and an annual schedule of budget development and management consistent with these rules.

(2) The Trial Court Policies and Procedures shall specify the process for a court to transfer existing funds between or among the budgeted program components to reflect changes in the court's planned operation or to correct technical errors. If the process requires a trial court to request approval of a specific transfer of existing funds, the Administrative Office of the Courts shall review the request to transfer funds and respond within 30 days of receipt of the request. The Administrative Office of the Courts shall respond to the request for approval or denial to the affected court, in writing, with copies provided to the Department of Finance, the Legislative Analyst Office, the Legislature's budget committees, and the court's affected labor organizations.

(3) The Judicial Council shall circulate for comment to all affected entities any amendments proposed to the Trial Court Policies and Procedures as they relate to budget monitoring and reporting. Final changes shall be adopted at a meeting of the Judicial Council.

SEC. 78. Section 13138 is added to the Health and Safety Code, to read:

13138. (a) For state agencies, departments, or programs that are charged for the costs of fire and life safety building code inspections rendered by the State Fire Marshal, the State Fire Marshal shall charge an amount sufficient to recover the costs incurred for the fire and life safety building code inspections.

(b) Upon the request of the State Fire Marshal, in the form prescribed by the Controller, the Controller shall transfer the amount of the charges for services rendered from the agency's appropriation to the appropriation for the support of the State Fire Marshal's office.

(c) A state agency that has a dispute regarding charges for fire and life safety building code inspections provided by the State Fire Marshal shall notify the State Fire Marshal, in writing, of the dispute and the basis therefor. The State Fire Marshal shall immediately provide a credit to the state agency in the subsequent billing or billings for the amount of the charges in dispute. No further transfer of funds shall occur with respect to the services for which charges are disputed until the dispute is resolved by the State Fire Marshal, subject to the approval of the Department of Finance.

SEC. 79. Section 50710.1 of the Health and Safety Code is amended to read:

50710.1. (a) If all the development costs of any migrant farm labor center assisted pursuant to this chapter are provided by federal, state, or local grants, and if inadequate funds are available from any federal, state, or local service to write-down operating costs, the department may approve rents for that center in excess of rents charged in other centers assisted by the Office of Migrant Services. However, notwithstanding any other provision of law, commencing with the 2005 growing season, the department shall not increase rents for residents of any Office of Migrant Services facility to a level that exceeds 30 percent of the average annualized household incomes of residents of the facility without specific legislative authorization. Prior to approving these rents, the department shall consider the adequacy of evidence presented by the entity operating the center that the rents reimburse actual, reasonable, and necessary costs of operation.

(b) At the end of each fiscal year, any entity operating a migrant farm labor center pursuant to this chapter may establish a reserve account comprised of the excess funds provided through the annual operating contract received from the department, if the department certifies there is no need to address reasonable general maintenance requirements or repairs, rehabilitation, and replacement needs of the requesting migrant farm labor center which affect the immediate health and safety of residents. The cumulative balance of the reserve account shall not exceed 10 percent of the annual operating funds annually committed to the entity by the department. Funds in the reserve account shall be used only for capital improvements such as replacing or repairing structural elements, furniture, fixtures, or equipment of the migrant farm labor center, the replacement or repair of which are reasonably required to preserve the migrant farm labor center. Withdrawals from the reserve account shall be made only upon the written approval of the department of the amount and nature of expenditures.

(c) A migrant farm labor center governed by this chapter may be operated for an extended period beyond 180 days after approval by the department, provided that all of the following conditions are satisfied:

(1) No additional subsidies provided by the department are used for the operation or administration of the migrant farm center during the extended occupancy period except to the extent that state funds are appropriated or authorized for the purpose of funding all or part of the cost of subsidizing extended occupancy periods during the first 14 days only.

(2) Rents are not to be increased above the rents charged during the period immediately prior to the extended occupancy period unless the department finds that an increase is necessary to cover the difference between reasonable operating costs necessary to keep the center open during the extended occupancy period and the amount of state funds available pursuant to paragraph (1) and any contributions from agricultural employers or other federal, local, or private sources. These contributions shall not be used to reduce the amount of state funds that otherwise would be made available to the center to subsidize rents during an extended occupancy period.

(3) In no event shall the rent during the extended occupancy period exceed the average daily operating cost of the center, less any subsidy funds available pursuant to paragraph (1) or (2). Households representing at least 25 percent of the units in the center shall have indicated their desire and intention to remain in residency during an extended occupancy period by signing a petition to the local entity to keep the center open for an extended period at rents that are the same or higher than rents during the regular period of occupancy. Each household shall receive a clear bilingual notice describing the extended occupancy options attached to the lease.

The Legislature finds and declares that because the number of residents may be substantially reduced during the extended occupancy period, a rent increase may be necessary to cover operating costs. It is the intent of the Legislature that the public sector, private sector, and farmworkers should each play an important role in ensuring the financial viability of this important source of needed housing.

(4) An extended occupancy period is requested by an entity operating the migrant farm labor center and received by the department no earlier than 30 days and no later than 15 days prior to the center's scheduled closing date. The department shall notify the entity and petitioning residents of the final decision no later than seven days prior to the center's scheduled closing date. During the extended occupancy period, occupancy shall be limited to migrant farmworkers and their families who resided at a migrant center during the regular period of occupancy.

(5) Before approving or denying an extension and establishing the rents for the extended occupancy period, both of which shall be within the sole discretion of the department, the department shall take into consideration all of the following factors:

(A) The structural and physical condition of the center, including water and sewer pond capacity and the capacity and willingness of the local entity to operate the center during the extended occupancy period.

(B) Whether local approvals are required, and whether there are competing demands for the use of the center's facilities.

(C) Whether there is adequate documentation that there is a need for residents of the migrant center to continue work in the area, as confirmed by the local entity.

(D) The climate during the extended occupancy period.

(E) The amount of subsidy funds available that can be allocated to each center to subsidize rents below the operating costs and the cost of operating each center during the extended occupancy period.

(F) The extended occupancy period is deemed necessary for the health and safety of the migrant farmworkers and their families.

(G) Other relevant factors affecting the migrant farmworkers and their families and the operation of the centers.

(6) The rents collected during the extended occupancy period shall be remitted to the department. However, based on financial records to the satisfaction of the department, the department may reduce the amount to be remitted by an amount it determines the local entity has expended during the extended occupancy period that is not being reimbursed by department funds.

(7) The occupancy during the extended occupancy period represents a new tenancy and is not subject to existing and statutory and regulatory limitations governing rents. Prior to the beginning of the extended occupancy period, residents shall be provided at least two days' advance written notice of any rent increase and of the expected length of the extended occupancy period, including the scheduled date of closure of the center, and prior to being eligible for residency during the extended occupancy period, residents shall sign rental documents deemed necessary by the department.

(d) The Legislature finds and declares that variable annual climates and changing agricultural techniques create an inability to accurately predict the end of a harvest season for the purposes of housing migrant farmworkers and their families. Because of these factors, in any part of this state, and in any specific year, one or more migrant farmworker housing centers governed by this chapter need to remain open for up to two additional weeks to allow the residents to provide critical assistance to growers in harvesting crops while also fulfilling work expectations that encouraged them to migrate to the areas of the centers. In addition, if the centers close prematurely, the migrant farmworkers often must remain in the areas to work for up to two weeks. During this time they will not be able to obtain decent, safe, and affordable housing and the

health and safety of their families and the surrounding community will be threatened.

The Legislature therefore finds and declares that, for the purposes of any public or private right, obligation, or authorization related to the use of property and improvements thereon as a 180-day migrant center, an extended use of any housing center governed by this chapter pursuant to this section is deemed to be the same as the 180-day use generally authorized by this chapter.

SEC. 80. 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 five million five hundred thousand dollars ($5,500,000) 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. 81. Section 2065 of the Labor Code is amended to read:

2065. (a) The Car Wash Worker Restitution Fund is established in the State Treasury.

(1) The following moneys shall be deposited into this fund:

(A) The annual fee required pursuant to subdivision (b) of Section 2059.

(B) Fifty percent of the fines collected pursuant to Section 2064.

(C) Fifty dollars ($50) of the initial registration fee required pursuant to subdivision (a) of Section 2059.

(2) Upon appropriation by the Legislature, the moneys in the fund shall be disbursed by the commissioner only to persons determined by the commissioner to have been damaged by the failure to pay wages and penalties and other related damages by any employer, to ensure the payment of wages and penalties and other related damages. Any disbursed funds subsequently recovered by the commissioner shall be returned to the fund.

(b) The Car Wash Worker Fund is established in the State Treasury.

(1) The following moneys shall be deposited into this fund:

(A) Fifty percent of the fines collected pursuant to Section 2064.

(B) The initial registration fee required pursuant to subdivision (a) of Section 2059, less the amount specified in subparagraph (C) of paragraph (1) of subdivision (a).

(2) Upon appropriation by the Legislature, the moneys in this fund shall be applied to costs incurred by the commissioner in administering the provisions of this part and enforcement and investigation of the car washing and polishing industry.

(c) The Department of Industrial Relations may establish by regulation those procedures necessary to carry out the provisions of this section.

SEC. 83. Section 4750 of the Penal Code is amended to read:

4750. A city, county, or superior court shall be entitled to reimbursement for reasonable and necessary costs connected with state prisons or prisoners in connection with any of the following:

(a) Any crime committed at a state prison, whether by a prisoner, employee, or other person.

With respect to a prisoner, ''crime committed at a state prison'' as used in this subdivision, includes, but is not limited to, crimes committed by the prisoner while detained in local facilities as a result of a transfer pursuant to Section 2910 or 6253, or in conjunction with any hearing, proceeding, or other activity for which reimbursement is otherwise provided by this section.

(b) Any crime committed by a prisoner in furtherance of an escape. Any crime committed by an escaped prisoner within 10 days after the escape and within 100 miles of the facility from which the escape occurred shall be presumed to have been a crime committed in furtherance of an escape.

(c) Any hearing on any return of a writ of habeas corpus prosecuted by or on behalf of a prisoner.

(d) Any trial or hearing on the question of the sanity of a prisoner.

(e) Any costs not otherwise reimbursable under Section 1557 or any other related provision in connection with any extradition proceeding for any prisoner released to hold.

(f) Any costs incurred by a coroner in connection with the death of a prisoner.

(g) Any costs incurred in transporting a prisoner within the host county or as requested by the prison facility or incurred for increased security while a prisoner is outside a state prison.

SEC. 84. Section 4751 of the Penal Code is amended to read:

4751. Costs incurred by a city or county include all of the following:

(a) Costs of law enforcement agencies in connection with any matter set forth in Section 4750, including the investigation or evaluation of any of those matters regardless of whether a crime has in fact occurred, a hearing held, or an offense prosecuted.

(b) Costs of participation in any trial or hearing of any matter set forth in Section 4750, including costs for the preparation for the trial, pretrial hearing, actual trial or hearing, expert witness fees, the costs of guarding or keeping the prisoner, the transportation of the prisoner, the costs of appeal, and the execution of the sentence. The cost of detention in a city or county correctional facility shall include the same cost factors as are utilized by the Department of Corrections in determining the cost of prisoner care in state correctional facilities.

(c) The costs of the prosecuting attorney in investigating, evaluating, or prosecuting cases related to any matter set forth in Section 4750, whether or not the prosecuting attorney decides to commence legal action.

(d) Costs incurred by the public defender or court appointed attorney with respect to any matter set forth in Section 4750.

(e) Any other costs reasonably incurred by a county in connection with any matter set forth in Section 4750.

SEC. 85. Section 4751.5 is added to the Penal Code, to read:

4751.5. Costs incurred by a superior court include all of the following:

(a) Costs of any trial or hearing of any matter set forth in Section 4750, including costs for the preparation of the trial, pretrial hearing, and the actual trial or hearing.

(b) Any other costs reasonably incurred by a superior court in connection with any matter set forth in Section 4750.

SEC. 86. Section 4752 of the Penal Code is amended to read:

4752. As used in this chapter, reasonable and necessary costs shall be based upon all operating costs, including the cost of elected officials, except superior court judges, while serving in line functions and including all administrative costs associated with providing the necessary services and securing reimbursement therefor. Administrative

costs include a proportional allowance for overhead determined in accordance with current accounting practices.

SEC. 87. Section 4753 of the Penal Code is amended to read:

4753. A city or county shall designate an officer or agency to prepare a statement of costs that shall be reimbursed under this chapter.

The statement shall be sent to the Controller for approval. The statement may not include any costs that are incurred by a superior court, as described in Section 4751.5. The Controller shall reimburse the city or county within 60 days after receipt of the statement or provide a written statement as to the reason for not making reimbursement at that time. If sufficient funds are not available, the Controller shall request the Director of Finance to include any amounts necessary to satisfy the claims in a request for a deficiency appropriation.

SEC. 88. Section 4753.5 is added to the Penal Code, to read:

4753.5. A superior court shall prepare a statement of costs that shall be reimbursed under this chapter. The state may not include any costs that are incurred by a city or county, as described in Section 4751. The statement shall be sent to the Administrative Office of the Courts for approval and reimbursement.

SEC. 89. Section 5023.5 is added to the Penal Code, to read:

5023.5. (a) Notwithstanding any other provision of law, the Department of Corrections and the Department of the Youth Authority may contract with providers of emergency health care services. Hospitals that do not contract with the Department of Corrections or the Department of the Youth Authority for emergency health care services shall provide these services to these departments on the same basis as they are required to provide these services pursuant to Section 489.24 of Title 42 of the Code of Federal Regulations. Neither the Department of Corrections nor the Department of the Youth Authority shall reimburse a hospital that provides these services, and that the department has not contracted with, at a rate that exceeds the hospital's reasonable and allowable costs, regardless of whether the hospital is located within or outside of California.

(b) An entity that provides ambulance or any other emergency or nonemergency response service to the Department of Corrections or the Department of the Youth Authority, and that does not contract with the departments for that service, shall be reimbursed for the service at the rate established by Medicare. Neither the Department of Corrections nor the Department of the Youth Authority shall reimburse a provider of any of these services that the department has not contracted with at a rate that exceeds the provider's reasonable and allowable costs, regardless of whether the provider is located within or outside of California.

(c) The Department of Corrections and the Department of the Youth Authority shall work with the State Department of Health Services in

obtaining hospital cost information in order to establish the costs allowable under this section. The State Department of Health Services may provide the Department of Corrections or the Department of the Youth Authority with hospital cost information that the State Department of Health Services obtains pursuant to Sections 14170 and 14171 of the Welfare and Institutions Code.

(d) For the purposes of this section, ''reasonable and allowable costs'' shall be defined in accordance with Part 413 of Title 42 of the Code of Federal Regulations and federal Centers for Medicare and Medicaid Services Publication Numbers 15.1 and 15.2.

SEC. 90. Section 6005 of the Penal Code is amended to read:

6005. (a) Whenever a person confined to a correctional institution under the supervision of the Department of the Youth Authority is charged with a public offense committed within the confines of that institution and is tried for that public offense, a city, county, or superior court shall be entitled to reimbursement for reasonable and necessary costs connected with that matter.

(b) The appropriate financial officer or other designated official of a county or the city finance officer of a city incurring any costs in connection with that matter shall make out a statement of all the costs incurred by the county or city for the investigation, the preparation for the trial, participation in the actual trial of the case, all guarding and keeping of the person, and the execution of the sentence of the person, properly certified to by a judge of the superior court of the county. The statement may not include any costs that are incurred by the superior court pursuant to subdivision (c). The statement shall be sent to the department for its approval. After the approval the department must cause the amount of the costs to be paid out of the money appropriated for the support of the department to the county treasurer of the county or the city finance officer of the city incurring those costs.

(c) The superior court shall prepare a statement of all costs incurred by the court for the preparation of the trial and the actual trial of the case. The statement may not include any costs that are incurred by the city or county pursuant to subdivision (a). The statement shall be sent to the Administrative Office of the Courts for approval and reimbursement.

SEC. 91. Section 10108.8 is added to the Public Contract Code, to read:

10108.8. The Department of Corrections, where feasible, shall enter into two or more procurement contracts for the purchase and development of the Business Information System (BIS) Project. The BIS project shall be developed to allow integration with other relevant statewide financial and personnel systems.

SEC. 92. Section 25226 is added to the Public Resources Code, to read:

25226. (a) The Energy Technologies Research, Development, and Demonstration Account established under former Section 25683 is hereby continued in existence, in the General Fund, to be administered by the commission for the purpose of carrying out Chapter 7.3 (commencing with Section 25630) and Chapter 7.5 (commencing with Section 25650).

(b) The Controller shall deposit in the account all money appropriated to the account by the Legislature, plus accumulated interest on that money, and money from loan repayments, interest, and royalties pursuant to Sections 25630 and 25650, for use by the commission, upon appropriation by the Legislature, for the purposes specified in Chapter 7.3 (commencing with Section 25630) and Chapter 7.5 (commencing with Section 25650).

SEC. 93. Section 25630 of the Public Resources Code is amended to read:

25630. (a) The commission shall establish a small business energy assistance low-interest revolving loan program to fund the purchase of equipment for alternative technology energy projects for California's small businesses.

(b) Loan repayments, interest, and royalties shall be deposited in the Energy Technologies Research, Development, and Demonstration Account. The interest rate shall be based on surveys of existing financial markets and at rates not lower than the Pooled Money Investment Account.

SEC. 94. Section 26020 of the Public Resources Code is amended to read:

26020. (a) The authority may incur indebtedness and issue and renew negotiable bonds, notes, debentures, or other securities of any kind or class. All indebtedness, however evidenced, shall be payable solely from revenues of the authority and the proceeds of its negotiable bonds, notes, debentures, or other securities, and shall not exceed the sum of one billion dollars ($1,000,000,000) of total debt outstanding.

(b) As used in this section, ''total debt outstanding'' does not include either of the following:

(1) A bond for which provisions have been made for prepayment through irrevocable escrow or other means, so that the bond is not considered outstanding under its authorizing document.

(2) Indebtedness that is incurred to refund existing debts, except to the extent that the indebtedness exceeds the amount of those debts.

SEC. 95. Section 884.5 is added to the Public Utilities Code, to read:

884.5. (a) This section shall apply to all customers eligible to receive discounts for telecommunications services under the federal Universal Service E-rate program administered by the Schools and Libraries Division of the Universal Service Administrative Company

that also apply for discounts on telecommunications service provided through the California Teleconnect Fund program pursuant to subdivision (a) of Section 280.

(b) A teleconnect discount shall be applied after applying the E-rate discount. The commission shall first apply the E-rate discount, regardless of whether the customer has applied for the E-rate discount or has been approved, if the customer, in the determination of the commission, meets the eligibility requirements for the E-rate discount.

(c) Notwithstanding subdivision (b), the teleconnect discount shall be applied without regard to the E-rate discount for any necessary small school, as defined in Section 42283 of the Education Code, unless that school has applied for, and been approved to receive, the E-rate discount.

(d) As a condition of participation in the California Teleconnect Fund program, the commission shall require customers eligible for the E-rate discount to provide the commission with information necessary for the commission to determine the percentage of the E-rate discount to which the customer would be entitled. The commission may require that customers update this information annually or if there is a material change.

(e) In establishing any discount under the California Teleconnect Fund program, the commission shall give priority to bridging the ''digital divide'' by encouraging expanded access to state-of-the-art technologies for rural, inner-city, low-income, and disabled Californians.

(f) As used in this section:

(1) ''E-rate discount'' means a discount under the E-rate program.

(2) ''E-rate program'' means the federal Universal Service E-rate program administered by the Schools and Libraries Division of the Universal Service Administrative Company.

(3) ''Teleconnect discount'' means a discount on telecommunications service provided through the California Teleconnect Fund program set forth in subdivision (a) of Section 280.

(g) This section shall become operative on January 1, 2006.

SEC. 96. Section 63.1 of the Revenue and Taxation Code is amended to read:

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

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

(2) The purchase or transfer of the first one million dollars ($1,000,000) of full cash value of all other real property of an eligible

transferor in the case of a purchase or transfer between parents and their children.

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

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

(b) (1) For purposes of paragraph (1) of subdivision (a), ''principal residence'' means a dwelling for which a homeowners' exemption or a disabled veterans' residence exemption has been granted in the name of the eligible transferor. ''Principal residence'' includes only that portion of the land underlying the principal residence that consists of an area of reasonable size that is used as a site for the residence.

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

exceed the amount of the transferor's separate unused exclusion on the date of the joint sale or transfer.

(c) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(B) For transfers of real property between parents and their children occurring on or after September 30, 1990, and for the purchase or transfer of real property between grandparents and their grandchildren occurring on or after March 27, 1996, within three years after the date of the

purchase or transfer of real property for which the claim is filed, or prior to transfer of the real property to a third party, whichever is earlier.

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

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

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

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

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

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

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

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

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

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

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

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

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

(i) In recognition of the state and local interests served by the action made optional in subdivision (f), the Legislature encourages local agencies to continue taking the action formerly mandated by this section. However, nothing in this subdivision may be construed to impose any liability on a local agency that does not continue to take the formerly mandated action.

SEC. 97. Section 2514 of the Revenue and Taxation Code is amended to read:

2514. (a) Upon receipt of a certificate of eligibility described in Section 20602, Section 20639.6, or Section 20640.6 signed by the claimant, the claimant's spouse, or authorized agent appointed under regulations adopted by the Controller pursuant to Section 20603 or Section 20640.7, the tax collector shall ascertain whether the amount of money entered on the certificate by such claimant or agent, when added to other amounts available for such purpose, are sufficient to pay the amount due and owing.

If such is the case, the tax collector or his or her designee shall countersign the certificate and mark the tax paid. Once signed and countersigned, a certificate of eligibility shall be deemed a negotiable instrument for purposes of all laws of this state, as specified in subdivision (d) of Section 20602. Upon acceptance of such a certificate:

(1) The tax collector shall enter the fact that taxes on the property have been postponed in appropriate columns on the roll. In the case of the secured roll, this information may be entered in that portion of the roll which has been designated for tax default information required by Section 3439.

(2) In the case of a certificate of eligibility issued pursuant to Section 20602, the tax collector shall determine if the property described in the

certificate of eligibility is subject to a lien recorded pursuant to Section 16182 of the Government Code. If the property is not subject to such a lien, the tax collector shall enter the amount paid by use of the certificate, the date of such payment, the Controller's identification number shown on the certificate of eligibility, the address of the property covered by the certificate, and the name of the claimant as shown on the certificate on a ''notice of lien for postponed property taxes'' form which shall be provided by the Controller. The tax collector shall thereafter forward such notice of lien form to the assessor.

(3) With respect to a claimant whose property taxes are paid by a lender from an impound, trust, or other type of account described in Section 2954 of the Civil Code, the tax collector shall notify the auditor of the claimant's name and address, and the amount of money entered on the certificate.

The auditor, treasurer, or disbursing officer shall send a check in the amount of money entered on the certificate to said claimant within 30 days following the date on which the installment is paid by the lender or the certificate of eligibility is received from the claimant, whichever is later.

(b) The procedures established by this chapter shall not be construed to require a lender to alter the manner in which a lender makes payment of the property taxes of such claimant.

(c) Notwithstanding any other provision in this section, any action required of a local agency by this section in order to give effect to the Senior Citizens Mobilehome Property Tax Postponement Law (Chapter 3.3 (commencing with Section 20639) of Part 10.5 of Division 2, and that has been determined by the Commission on State Mandates to be a reimbursable mandate, shall be optional.

SEC. 98. Section 8352 of the Revenue and Taxation Code is amended to read:

8352. Subject to the provisions of any budget bill heretofore or hereafter enacted, the money deposited to the credit of the Motor Vehicle Fuel Account is hereby appropriated for expenditure, allocation, or transfer as provided in this chapter.

SEC. 99. Section 30462 of the Revenue and Taxation Code is amended to read:

30462. (a) All money deposited in the Cigarette Tax Fund under this part is hereby appropriated, subject to the provisions of any budget bill heretofore or hereafter enacted, and shall, upon order of the Controller, be drawn therefrom and allocated for the following purposes:

(1) To pay the refunds authorized by this part.

(2) The balance remaining in the fund shall be transferred to the General Fund of this state on or before the last calendar day of each month.

(b) It is the intent of the Legislature that Section 30111 continues to prohibit the imposition of local taxes by any city, charter city, town, county, charter county, city and county, charter cities and counties, or other political subdivision or agency of this state, on the sale, use, ownership, holding, or other distribution of cigarettes and tobacco products except as provided by Section 30111. The Legislature finds and declares that the need for uniform statewide regulation and collection of cigarette taxes is a matter of statewide concern, and it is the Legislature's intent to regulate the subject matter of cigarette taxes comprehensively and to occupy the field to the exclusion of local action except as specifically provided by Section 30111.

SEC. 100. Section 1587 of the Unemployment Insurance Code is amended to read:

1587. No expenditure for administration shall be made from the Contingent Fund.

SEC. 101. Section 21401 of the Vehicle Code is amended to read:

21401. (a) Except as provided in Section 21374, only those official traffic control devices that conform to the uniform standards and specifications promulgated by the Department of Transportation shall be placed upon a street or highway.

(b) Any traffic signal controller that is newly installed or upgraded by the Department of Transportation shall be of a standard traffic signal communication protocol capable of two-way communications. A local authority may follow this requirement.

(c) Notwithstanding any other provision of this section, the training required by this section shall be optional for local agencies. In recognition of the state and local interests served by the action made optional in this section, the Legislature encourages local agencies to continue taking the action formerly mandated by this section. However, nothing in this subdivision may be construed to impose any liability on a local agency that does not continue to take the formerly mandated action.

SEC. 102. Section 42272 of the Vehicle Code is repealed.

SEC. 103. Section 3 of Chapter 899 of the Statutes of 1995 is amended to read:

Sec. 3. The sum of four million four hundred thousand dollars ($4,400,000) is appropriated from the California Residential Earthquake Recovery Fund to the Department of Insurance for the program established pursuant to this act. During the second half of the 1995–96 fiscal year, the Department of Insurance may use up to one hundred fifty-nine thousand dollars ($159,000) for costs of initial implementation and administration of the program. During the 1996–97 and 1997–98 fiscal years, no more than two hundred thousand dollars ($200,000) per fiscal year may be used by the department to administer

this program. During the 1998–99 through 2002–03 fiscal years, no more than two hundred sixty-five thousand dollars ($265,000) per fiscal year may be used by the department to administer this program. Thereafter, no more than two hundred ninety thousand dollars ($290,000)'' per fiscal year may be used by the department to administer the program.

Money appropriated by this section shall be available for expenditure until July 1, 2004.

SEC. 104. Section 30 of Chapter 573 of the Statutes of 2003 is amended to read:

Sec. 30. (a) 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 January 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.

(b) Notwithstanding subdivision (a), Article 20.5 (commencing with Section 69999.6) of Chapter 2 of Part 42 of the Education Code shall govern the administrative responsibilities of the Scholarshare Investment Board with respect to the Governor's Scholarship Programs on and after the date that Article 20.5 (commencing with Section 69999.6) of Chapter 2 of Part 42 of the Education Code becomes operative.

SEC. 105. The state office building in the City of Fresno for the California Court of Appeal, Fifth Appellate District, shall be named and known as the ''George N. Zenovich Court of Appeal Building.''

SEC. 106. It is the intent of the Legislature that the amendments to Sections 71601, 71636, and 71823 of the Government Code made by this act are technical and clarifying of existing law.

SEC. 107. (a) The Deficit Recovery Fund is hereby established in the State Treasury.

(b) Proceeds of the bonds issued pursuant to the Economic Recovery Bond Act (Title 18 (commencing with Section 99050) of the Government Code) adopted by the voters at the March 2, 2004, statewide primary election, accrued as 2003–04 fiscal year revenues, and deposited in the General Fund from the Economic Recovery Fund pursuant to Section 99060 of the Government Code, are hereby appropriated from the General Fund for transfer by the Controller for the

2003–04 fiscal year to the Deficit Recovery Fund, upon approval by the Director of Finance.

(c) The Director of Finance shall use the moneys transferred to the Deficit Recovery Fund pursuant to this section to reimburse General Fund expenditures, to reflect savings at a statewide level, for the 2003–04 and 2004–05 fiscal years.

(d) Moneys in the Deficit Recovery Fund may be borrowed for General Fund cashflow purposes as authorized by Sections 16310 and 16418 of the Government Code.

SEC. 109. Notwithstanding any other provision of law, the Commission on State Mandates shall reconsider former State Board of Control decisions 3916, 3759, 3760, and 3929 regarding the regional housing needs mandate enacted by Chapter 1143 of the Statutes of 1980 to determine whether the statute is a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal and state statutes enacted and federal and state court decisions rendered since this statute was enacted, including the existence of fee authority pursuant to Section 65584.1 of the Government Code. The commission, if necessary, shall revise its parameters and guidelines to be consistent with this reconsideration. Any changes by the commission shall be deemed effective July 1, 2004.

SEC. 110. The Commission on State Mandates shall amend the appropriate parameters and guidelines, and the Controller shall revise the appropriate reimbursement claiming instructions to be consistent with this act.

SEC. 111. (a) The sum of two million eight hundred thousand dollars ($2,800,000) is hereby appropriated from the Property Acquisition Law Money Account to the Department of General Services for the 2004–05 fiscal year, for activities associated with the disposal of surplus state property pursuant to Section 11011.10 of the Government Code, as added by Section 34 of this act.

(b) The balance of any funds appropriated pursuant to subdivision (a) that remain unencumbered on June 30, 2005, shall revert to the Property Acquisition Law Money Account as of that date.

SEC. 112. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

SEC. 113. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of

Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary changes to implement the Budget Act of 2004 it is necessary that this act take effect immediately.

CHAPTER 228

An act to amend Section 17002 of the Corporations Code, to amend Section 6254 of the Government Code, to amend Sections 1341.4, 1575.5, 101315, 101319, 101750, 123707, 124977, 124980, 125000, 125001, and 127671 of, to add Sections 101320, 101750.5, and 120956 to, to add Chapter 5 (commencing with Section 123223) to Part 1 of Division 106 of, and to repeal Article 6 (commencing with Section 101315) of Chapter 3 of Part 3 of Division 101 of, the Health and Safety Code, to amend Section 12693.43 of, and to repeal Section 12699.10 of, the Insurance Code, and to amend Sections 4094.2, 4631.5, 4643, 4648.4, 4681.5, 4691.6, 4781.5, 5775, 14007.9, 14018.7, 14044, 14085.7, 14085.8, 14087.31, 14087.35, 14087.36, 14087.38, 14087.51, 14087.54, 14087.9605, 14094.3, 14105.19, 14105.336, 14105.337, 14132.100, 14574, 16809, 22003, and 22009 of, to amend and repeal Section 14464.5 of, to add Sections 4865.1, 14043.46, 14132.107, 14132.108, 14133.01, 14154.5, 14170.11, 14552.5, and 22005.2 to, to add and repeal Sections 4783 and 14132.105 of, to repeal Sections 14105.46 and 14110.65 of, and to repeal and add Section 14105.45 of, the Welfare and Institutions Code, and to repeal Section 80.5 of Chapter 230 of the Statutes of 2003, relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 17002 of the Corporations Code is amended to read:

17002. (a) Subject to any limitations contained in the articles of organization and to compliance with any other applicable laws, a limited liability company may engage in any lawful business activity, except the banking business, the business of issuing policies of insurance and assuming insurance risks, or the trust company business.

(b) Notwithstanding subdivision (a), a limited liability company may operate as a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety

Code if the limited liability company is a subsidiary of a health care service plan licensed pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code and is established to serve an existing line of business of the parent health care service plan.

SEC. 2. Section 6254 of the Government Code is amended to read:

6254. Except as provided in Sections 6254.7 and 6254.13, nothing in this chapter shall be construed to require disclosure of records that are any of the following:

(a) Preliminary drafts, notes, or interagency or intra-agency memoranda that are not retained by the public agency in the ordinary course of business, provided that the public interest in withholding those records clearly outweighs the public interest in disclosure.

(b) Records pertaining to pending litigation to which the public agency is a party, or to claims made pursuant to Division 3.6 (commencing with Section 810), until the pending litigation or claim has been finally adjudicated or otherwise settled.

(c) Personnel, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(d) Contained in or related to any of the following:

(1) Applications filed with any state agency responsible for the regulation or supervision of the issuance of securities or of financial institutions, including, but not limited to, banks, savings and loan associations, industrial loan companies, credit unions, and insurance companies.

(2) Examination, operating, or condition reports prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(3) Preliminary drafts, notes, or interagency or intra-agency communications prepared by, on behalf of, or for the use of, any state agency referred to in paragraph (1).

(4) Information received in confidence by any state agency referred to in paragraph (1).

(e) Geological and geophysical data, plant production data, and similar information relating to utility systems development, or market or crop reports, that are obtained in confidence from any person.

(f) Records of complaints to, or investigations conducted by, or records of intelligence information or security procedures of, the office of the Attorney General and the Department of Justice, and any state or local police agency, or any investigatory or security files compiled by any other state or local police agency, or any investigatory or security files compiled by any other state or local agency for correctional, law enforcement, or licensing purposes, except that state and local law enforcement agencies shall disclose the names and addresses of persons involved in, or witnesses other than confidential informants to, the incident, the description of any property involved, the date, time, and

location of the incident, all diagrams, statements of the parties involved in the incident, the statements of all witnesses, other than confidential informants, to the victims of an incident, or an authorized representative thereof, an insurance carrier against which a claim has been or might be made, and any person suffering bodily injury or property damage or loss, as the result of the incident caused by arson, burglary, fire, explosion, larceny, robbery, carjacking, vandalism, vehicle theft, or a crime as defined by subdivision (b) of Section 13951, unless the disclosure would endanger the safety of a witness or other person involved in the investigation, or unless disclosure would endanger the successful completion of the investigation or a related investigation. However, nothing in this division shall require the disclosure of that portion of those investigative files that reflect the analysis or conclusions of the investigating officer.

Customer lists provided to a state or local police agency by an alarm or security company at the request of the agency shall be construed to be records subject to this subdivision.

Notwithstanding any other provision of this subdivision, state and local law enforcement agencies shall make public the following information, except to the extent that disclosure of a particular item of information would endanger the safety of a person involved in an investigation or would endanger the successful completion of the investigation or a related investigation:

(1) The full name and occupation of every individual arrested by the agency, the individual's physical description including date of birth, color of eyes and hair, sex, height and weight, the time and date of arrest, the time and date of booking, the location of the arrest, the factual circumstances surrounding the arrest, the amount of bail set, the time and manner of release or the location where the individual is currently being held, and all charges the individual is being held upon, including any outstanding warrants from other jurisdictions and parole or probation holds.

(2) Subject to the restrictions imposed by Section 841.5 of the Penal Code, the time, substance, and location of all complaints or requests for assistance received by the agency and the time and nature of the response thereto, including, to the extent the information regarding crimes alleged or committed or any other incident investigated is recorded, the time, date, and location of occurrence, the time and date of the report, the name and age of the victim, the factual circumstances surrounding the crime or incident, and a general description of any injuries, property, or weapons involved. The name of a victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be withheld at the victim's request, or at the request of the victim's parent or guardian

if the victim is a minor. When a person is the victim of more than one crime, information disclosing that the person is a victim of a crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code may be deleted at the request of the victim, or the victim's parent or guardian if the victim is a minor, in making the report of the crime, or of any crime or incident accompanying the crime, available to the public in compliance with the requirements of this paragraph.

(3) Subject to the restrictions of Section 841.5 of the Penal Code and this subdivision, the current address of every individual arrested by the agency and the current address of the victim of a crime, where the requester declares under penalty of perjury that the request is made for a scholarly, journalistic, political, or governmental purpose, or that the request is made for investigation purposes by a licensed private investigator as described in Chapter 11.3 (commencing with Section 7512) of Division 3 of the Business and Professions Code, except that the address of the victim of any crime defined by Section 220, 261, 261.5, 262, 264, 264.1, 273a, 273d, 273.5, 286, 288, 288a, 289, 422.6, 422.7, 422.75, or 646.9 of the Penal Code shall remain confidential. Address information obtained pursuant to this paragraph shall not be used directly or indirectly to sell a product or service to any individual or group of individuals, and the requester shall execute a declaration to that effect under penalty of perjury.

(g) Test questions, scoring keys, and other examination data used to administer a licensing examination, examination for employment, or academic examination, except as provided for in Chapter 3 (commencing with Section 99150) of Part 65 of the Education Code.

(h) The contents of real estate appraisals or engineering or feasibility estimates and evaluations made for or by the state or local agency relative to the acquisition of property, or to prospective public supply and construction contracts, until all of the property has been acquired or all of the contract agreement obtained. However, the law of eminent domain shall not be affected by this provision.

(i) Information required from any taxpayer in connection with the collection of local taxes that is received in confidence and the disclosure of the information to other persons would result in unfair competitive disadvantage to the person supplying the information.

(j) Library circulation records kept for the purpose of identifying the borrower of items available in libraries, and library and museum materials made or acquired and presented solely for reference or exhibition purposes. The exemption in this subdivision shall not apply to records of fines imposed on the borrowers.

(k) Records, the disclosure of which is exempted or prohibited pursuant to federal or state law, including, but not limited to, provisions of the Evidence Code relating to privilege.

(*l*) Correspondence of and to the Governor or employees of the Governor's office or in the custody of or maintained by the Governor's Legal Affairs Secretary, provided that public records shall not be transferred to the custody of the Governor's Legal Affairs Secretary to evade the disclosure provisions of this chapter.

(m) In the custody of or maintained by the Legislative Counsel, except those records in the public database maintained by the Legislative Counsel that are described in Section 10248.

(n) Statements of personal worth or personal financial data required by a licensing agency and filed by an applicant with the licensing agency to establish his or her personal qualification for the license, certificate, or permit applied for.

(o) Financial data contained in applications for financing under Division 27 (commencing with Section 44500) of the Health and Safety Code, where an authorized officer of the California Pollution Control Financing Authority determines that disclosure of the financial data would be competitively injurious to the applicant and the data is required in order to obtain guarantees from the United States Small Business Administration. The California Pollution Control Financing Authority shall adopt rules for review of individual requests for confidentiality under this section and for making available to the public those portions of an application that are subject to disclosure under this chapter.

(p) Records of state agencies related to activities governed by Chapter 10.3 (commencing with Section 3512), Chapter 10.5 (commencing with Section 3525), and Chapter 12 (commencing with Section 3560) of Division 4 of Title 1, that reveal a state agency's deliberative processes, impressions, evaluations, opinions, recommendations, meeting minutes, research, work products, theories, or strategy, or that provide instruction, advice, or training to employees who do not have full collective bargaining and representation rights under these chapters. Nothing in this subdivision shall be construed to limit the disclosure duties of a state agency with respect to any other records relating to the activities governed by the employee relations acts referred to in this subdivision.

(q) Records of state agencies related to activities governed by Article 2.6 (commencing with Section 14081), Article 2.8 (commencing with Section 14087.5), and Article 2.91 (commencing with Section 14089) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, that reveal the special negotiator's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services, impressions, opinions, recommendations,

meeting minutes, research, work product, theories, or strategy, or that provide instruction, advice, or training to employees.

Except for the portion of a contract containing the rates of payment, contracts for inpatient services entered into pursuant to these articles, on or after April 1, 1984, shall be open to inspection one year after they are fully executed. In the event that a contract for inpatient services that is entered into prior to April 1, 1984, is amended on or after April 1, 1984, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after it is fully executed. If the California Medical Assistance Commission enters into contracts with health care providers for other than inpatient hospital services, those contracts shall be open to inspection one year after they are fully executed.

Three years after a contract or amendment is open to inspection under this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

Notwithstanding any other provision of law, the entire contract or amendment shall be open to inspection by the Joint Legislative Audit Committee and the Legislative Analyst's office. The committee and the office shall maintain the confidentiality of the contracts and amendments until the time a contract or amendment is fully open to inspection by the public.

(r) Records of Native American graves, cemeteries, and sacred places maintained by the Native American Heritage Commission.

(s) A final accreditation report of the Joint Commission on Accreditation of Hospitals that has been transmitted to the State Department of Health Services pursuant to subdivision (b) of Section 1282 of the Health and Safety Code.

(t) Records of a local hospital district, formed pursuant to Division 23 (commencing with Section 32000) of the Health and Safety Code, or the records of a municipal hospital, formed pursuant to Article 7 (commencing with Section 37600) or Article 8 (commencing with Section 37650) of Chapter 5 of Division 3 of Title 4 of this code, that relate to any contract with an insurer or nonprofit hospital service plan for inpatient or outpatient services for alternative rates pursuant to Section 10133 or 11512 of the Insurance Code. However, the record shall be open to inspection within one year after the contract is fully executed.

(u) (1) Information contained in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department that indicates when or where the applicant is vulnerable to attack or that concerns the applicant's medical or psychological history or that of members of his or her family.

(2) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in applications for licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(3) The home address and telephone number of peace officers, judges, court commissioners, and magistrates that are set forth in licenses to carry firearms issued pursuant to Section 12050 of the Penal Code by the sheriff of a county or the chief or other head of a municipal police department.

(v) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Part 6.3 (commencing with Section 12695) and Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Part 6.3 (commencing with Section 12695) or Part 6.5 (commencing with Section 12700) of Division 2 of the Insurance Code, on or after July 1, 1991, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract for health coverage that is entered into prior to July 1, 1991, is amended on or after July 1, 1991, the amendment, except for any portion containing the rates of payment, shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (3).

(w) (1) Records of the Major Risk Medical Insurance Program related to activities governed by Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions,

opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) Except for the portion of a contract that contains the rates of payment, contracts for health coverage entered into pursuant to Chapter 14 (commencing with Section 10700) of Part 2 of Division 2 of the Insurance Code, on or after January 1, 1993, shall be open to inspection one year after they have been fully executed.

(3) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto, until the contract or amendments to a contract is open to inspection pursuant to paragraph (2).

(x) Financial data contained in applications for registration, or registration renewal, as a service contractor filed with the Director of the Department of Consumer Affairs pursuant to Chapter 20 (commencing with Section 9800) of Division 3 of the Business and Professions Code, for the purpose of establishing the service contractor's net worth, or financial data regarding the funded accounts held in escrow for service contracts held in force in this state by a service contractor.

(y) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with health plans, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code, on or after January 1, 1998, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 6.2 (commencing with Section 12693) or Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

(5) The exemption from disclosure provided pursuant to this subdivision for the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff shall also apply to the contracts, deliberative processes, discussions, communications, negotiations with health plans, impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of applicants pursuant to Part 6.4 (commencing with Section 12699.50) of Division 2 of the Insurance Code.

(z) Records obtained pursuant to paragraph (2) of subdivision (c) of Section 2891.1 of the Public Utilities Code.

(aa) A document prepared by or for a state or local agency that assesses its vulnerability to terrorist attack or other criminal acts intended to disrupt the public agency's operations and that is for distribution or consideration in a closed session.

(bb) (1) Records of the Managed Risk Medical Insurance Board related to activities governed by Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code, and that reveal the deliberative processes, discussions, communications, or any other portion of the negotiations with entities contracting or seeking to contract with the board, or the impressions, opinions, recommendations, meeting minutes, research, work product, theories, or strategy of the board or its staff, or records that provide instructions, advice, or training to employees.

(2) (A) Except for the portion of a contract that contains the rates of payment, contracts entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code on or after January 1, 2004, shall be open to inspection one year after they have been fully executed.

(B) In the event that a contract entered into pursuant to Part 8.7 (commencing with Section 2120) of Division 2 of the Labor Code is amended, the amendment shall be open to inspection one year after the amendment has been fully executed.

(3) Three years after a contract or amendment is open to inspection pursuant to this subdivision, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(4) Notwithstanding any other provision of law, the entire contract or amendments to a contract shall be open to inspection by the Joint Legislative Audit Committee. The committee shall maintain the confidentiality of the contracts and amendments thereto until the contract or amendments to a contract are open to inspection pursuant to paragraph (2) or (3).

Nothing in this section prevents any agency from opening its records concerning the administration of the agency to public inspection, unless disclosure is otherwise prohibited by law.

Nothing in this section prevents any health facility from disclosing to a certified bargaining agent relevant financing information pursuant to Section 8 of the National Labor Relations Act.

SEC. 3. Section 1341.4 of the Health and Safety Code is amended to read:

1341.4. (a) In order to effectively support the Department of Managed Care in the administration of this law, there is hereby established in the State Treasury, the Managed Care Fund. The administration of the Department of Managed Care shall be supported from the Managed Care Fund.

(b) For the 2004–05 and 2005–06 fiscal years only, up to three hundred sixty-four thousand dollars ($364,000) from the Managed Care Fund may be used annually to support staff and related functions associated with the California Health Care Quality Improvement and Cost Containment Commission established pursuant to Chapter 8 (commencing with Section 127670) of Part 2 of Division 107.

(c) In any fiscal year, the Managed Care Fund shall maintain not more than a prudent 5 percent reserve unless otherwise determined by the Department of Finance.

SEC. 3.2. Section 1575.5 of the Health and Safety Code is amended to read:

1575.5. (a) Concurrently with the submission of any application under Section 1575.2, the applicant shall apply to the department for eligibility certification as a provider of adult day health care services reimbursable under the Medi-Cal Act (Chapter 7 (commencing with Section 14000) of Part 3 of Division 9 of the Welfare and Institutions Code). No license shall be issued or renewed for an adult day health care center that is not approved as a Medi-Cal provider of adult day health care services.

(b) (1) This section shall not apply to centers licensed during a moratorium imposed in accordance with Section 14043.46 of the Welfare and Institutions Code. The moratorium shall not prohibit the department from approving a change in ownership, relocation, or increase in capacity for an adult day health care center that meets the

conditions in subdivision (c) of Section 14043.46 of the Welfare and Institutions Code.

(2) This section shall not apply upon the implementation of the adult day health care waiver in accordance with the Welfare and Institutions Code.

SEC. 3.5. Section 101315 of the Health and Safety Code is amended to read:

101315. (a) Federal funding received by the State Department of Health Services for bioterrorism preparedness and emergency response is subject to appropriation in the annual Budget Act or other statute, commencing with the 2003–04 fiscal year.

(b) This article shall govern those instances when federal funding is allocated and expended for public health preparedness and response by local health jurisdictions, hospitals, clinics, emergency medical systems, and poison control centers for the prevention of, and response to, bioterrorist attacks and other public health emergencies pursuant to the federally approved collaborative state-local plan.

(c) A local health jurisdiction shall be ineligible to receive funding from appropriations made for purposes of this article when that local health jurisdiction receives directly or through another local jurisdiction federal funding for the same purposes. Moneys appropriated for purposes of this article that would have been allocated to a local health jurisdiction that is ineligible, pursuant to this subdivision, to receive funding shall be allocated, as provided in Section 101317, among the remaining local health jurisdictions that are eligible.

(d) Funds appropriated for the purposes of this article shall not be used to supplant funding for existing levels of service and shall only be used for purposes specified in Section 101317.

(e) This article shall apply only when local health jurisdictions, hospitals, clinics, emergency medical systems, and poison control centers are designated by a federal or state agency to manage the funds for public health preparedness and response to bioterrorist attacks and other public health emergencies, pursuant to the federally approved collaborative state-local plan.

SEC. 3.6. Section 101319 of the Health and Safety Code is amended to read:

101319. Due to the need to rapidly implement, and to provide local health jurisdictions, hospitals, clinics, emergency medical systems, and poison control centers with timely funding for the purposes of, this article, funds appropriated in the annual Budget Act or some other act for purposes of this article for the 2002–03 fiscal year and subsequent fiscal years shall be allocated through the use of agreements, which shall not be subject to Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

SEC. 3.7. Section 101320 is added to the Health and Safety Code, to read:

101320. This article shall become inoperative on September 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. 3.8. Section 101750 of the Health and Safety Code is amended to read:

101750. The authority is hereby declared to be a body corporate and politic and it shall have power:

(a) To have perpetual succession.

(b) To sue and be sued in the name of the authority in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(c) To adopt a seal and alter it at pleasure.

(d) To take by grant, purchase, gift, devise, or lease, to hold, use and enjoy, and to lease, convey or dispose of, real and personal property of every kind, within or without the boundaries of the authority, necessary or convenient to the full exercise of its powers. The board may lease, mortgage, sell, or otherwise dispose of any real or personal property within or without the boundaries of the authority necessary to the full or convenient exercise of its powers.

(e) To make and enter into contracts with any public agency or person for the purposes of this chapter, including, but not limited to, agreements under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code. Members of the board shall be disqualified from voting on contracts in which they have a financial interest. Notwithstanding any other provision of law, members shall not be disqualified from continuing to serve as a member of the board and a contract may not be avoided solely because of a member's financial interest.

(f) To appoint and employ an executive director and other employees as may be necessary, including legal counsel, fix their compensation and define their powers and duties. The board shall prescribe the amounts and forms of fidelity bond of its officers and employees. The cost of these bonds shall be borne by the authority. The authority may also contract for the services of an independent contractor.

(g) To incur indebtedness not exceeding revenue in any year.

(h) To purchase supplies, equipment, materials, property, or services.

(i) To establish policies relating to its purposes.

(j) To acquire or contract to acquire, rights-of-way, easements, privileges, or property of every kind within or without the boundaries of the authority, and construct, equip, maintain, and operate any and all works or improvements within or without the boundaries of the authority necessary, convenient, or proper to carry out any of the provisions,

objects or purposes of this chapter, and to complete, extend, add to, repair, or otherwise improve any works or improvements acquired by it.

(k) To make contracts and enter into stipulations of any nature upon the terms and conditions that the board finds are for the best interest of the authority for the full exercise of the powers granted in this chapter.

(*l*) To accept gifts, contributions, grants or loans from any public agency or person for the purposes of this chapter. The authority may do any and all things necessary in order to avail itself of the gifts, contributions, grants or loans, and cooperate under any federal or state legislation in effect on March 25, 1982 or enacted after that date.

(m) To manage its moneys and to provide depository and auditing services pursuant to either of the methods applicable to special districts as set forth in the Government Code.

(n) To negotiate with service providers rates, charges, fees and rents, and to establish classifications of health care systems operated by the authority. Members of the board who are county officers and employees may vote to approve arrangements and agreements between the authority and the county as a service provider and these directors shall not thus be disqualified solely for the reason that they are employed by the county.

(o) To develop and implement health care delivery systems to promote quality care and cost efficiency and to provide appeal and grievance procedures available to both providers and consumers.

(p) To provide health care delivery systems for any or all of the following:

(1) For all persons who are eligible to receive medical benefits under the Medi-Cal Act, as set forth in Sections 14000 and following, of the Welfare and Institutions Code in the county through waiver, pilot project, or otherwise.

(2) For all persons in the county who are eligible to receive medical benefits under both Titles XVIII and XIX of the federal Social Security Act.

(3) For all persons in the county who are eligible to receive medical benefits under Title XVIII of the federal Social Security Act.

(4) For all persons in the county who are eligible to receive medical benefits under publicly supported programs if the authority, and participating providers acting pursuant to subcontracts with the authority, agree to hold harmless the beneficiaries of the publicly supported programs if the contract between the sponsoring government agency and the authority does not ensure sufficient funding to cover program benefits.

(q) To insure against any accident or destruction of its health care system or any part thereof. It may insure against loss of revenues from any cause. The authority may also provide insurance as provided in Part

6 (commencing with Section 989) of Division 3.6 of Title 1 of the Government Code.

(r) To exercise powers that are expressly granted and powers that are reasonably implied from express powers and necessary to carry out the purposes of this chapter.

(s) To do any and all things necessary to carry out the purposes of this chapter.

SEC. 3.9. Section 101750.5 is added to the Health and Safety Code, to read:

101750.5. Notwithstanding subdivision (f) of Section 14499.5 of the Welfare and Institutions Code, for the purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, the authority shall be considered a public entity separate from the county or counties and shall file the statement required by Section 53051 of the Government Code.

SEC. 4. Section 120956 is added to the Health and Safety Code, to read:

120956. (a) The AIDS Drug Assistance Program Rebate Fund is hereby created as a special fund in the State Treasury.

(b) All rebates collected from drug manufacturers on drugs purchased through the AIDS Drugs Assistance Program (ADAP) implemented pursuant to this chapter and, notwithstanding Section 16305.7 of the Government Code, interest earned on these moneys shall be deposited in the fund exclusively to cover costs related to the purchase of drugs and services provided through ADAP.

(c) Notwithstanding Section 13340 of the Government Code, moneys in the fund shall be continuously appropriated without regard to fiscal year to State Department of Health Services and available for expenditure for those purposes specified under this section.

SEC. 5. Chapter 5 (commencing with Section 123223) is added to Part 1 of Division 106 of the Health and Safety Code, to read:

CHAPTER 5. CHILDREN'S MEDICAL SERVICES REBATE FUND

123223. (a) The Children's Medical Services Rebate Fund is hereby created as a special fund in the State Treasury.

(b) All rebates for the delivery of health care, medical supplies, pharmaceuticals, including blood replacement products, and equipment for clients enrolled in the state funded Genetically Handicapped Person's Program, Chapter 2 (commencing with Section 125125) of Part 5, and the California Children's Services Program, Article 5 (commencing with Section 123800) of Chapter 3 of Part 2, and, notwithstanding Section 16305.7 of the Government Code, interest earned on these moneys, shall be deposited in the Children's Medical Services Rebate

Fund exclusively to cover costs related to services, and the administration of services, provided through the Genetically Handicapped Person's Program and California Children's Services Program.

(c) Notwithstanding Section 13340 of the Government Code, moneys in the Children's Medical Services Rebate Fund shall be continuously appropriated without regard to fiscal year to the State Department of Health Services and available for expenditure for those purposes specified under this section.

SEC. 6. Section 123707 of the Health and Safety Code is amended to read:

123707. (a) The State Department of Health Services may manufacture, test, distribute, and maintain licensure of the product Botulism Immune Globulin Intravenous (Human) if all necessary federal licenses are obtained. The department was issued United States License No. 1622 on October 23, 2003, by the United States Food and Drug Administration under the authority of Section 351(a) of the Public Health Service Act controlling the manufacture and sale of biological products. The product may be labeled with the proprietary name BabyBIG®.

(b) The United States Food and Drug Administration license agreement stipulated the contracts and commodity purchases required to manufacture, test, distribute, and maintain licensure of Botulism Immune Globulin Intravenous (Human). Therefore, contracts and commodity purchases for any manufacture, testing, distribution, packaging, development, and licensure of Botulism Immune Globulin Intravenous (Human) by the department shall be exempt from competitive bidding and shall be exempt from the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

(c) Since the incidence of infant botulism in California can vary by as much as 60 percent from year to year, and since continuity of program operations is critical to the health and well-being of these infants, any funds not expended at the end of the fiscal year shall be carried forward into the next fiscal year, notwithstanding any other provision of law.

(d) In carrying out this article, the Infant Botulism Treatment and Prevention Unit may adopt regulations, make and receive grants, and enter into contracts and interagency agreements.

SEC. 6.1. The Legislature finds and declares all of the following:

(a) Birth defects are the leading cause of infant death in California and the United States.

(b) In California, more than 530,000 babies are born each year. According to the California Birth Defects Monitoring Program, one in 33 will be born with a debilitating condition. Of these, one in 11 will die.

(c) Each year, newborn screen programs in all states test four million newborns to identify those who may have specific genetic and metabolic disorders that could threaten their life or long-term health and development. An estimated one in 3,000 newborn children carries a metabolic disorder that interferes with the growing child's development. California conducts newborn screening for the following disorders: phenylketonuria, galactosemia, sickle cell disease, and congenital hypothyroidism. Since 1980, more than 5,500 cases of these disorders have been detected from a small blood sample collected from each newborn shortly after birth. Without early detection and dietary treatment, children affected with these genetic conditions may suffer serious illness, severe physical or developmental disability, and death. The state's newborn screening program has proven effective in reducing the incidence of morbidity and mortality resulting from these four disorders.

(d) Recent technological advances make it possible and affordable to screen for larger numbers of treatable metabolic disorders, more than 20 from a single sample. At least 26 states have implemented this new technology, tandem mass spectrometry. In order to keep pace with the rest of the nation, California needs to expand its newborn screening program.

(e) In 2002–03, the Genetic Disease Branch (GDB) of the State Department of Health Services conducted a pilot project to expand newborn screening to 30 disorders.

(f) According to the Centers for Disease Control and Prevention, the average lifetime cost of providing services to a person with moderate mental retardation is $1,014,000. For every 20 additional cases identified through expanded screening, average lifetime cost savings could exceed $20,000,000. Approximately 38 percent of infants born in California are eligible for Medi-Cal. Thus, significant costs are incurred by the state for providing medical care, special education, developmental services, and physical and speech, or occupational therapies to children with untreated disorders. Health plans, insurance companies, and individual families also incur major costs.

(g) Cost-benefit analyses have repeatedly found that expanded newborn screening produces significant net benefits. The GDB estimates that for every dollar spent on expanded screening, $2.59 is saved in average lifetime costs. Moreover, expanded screening will save lives.

SEC. 6.2. Section 124977 of the Health and Safety Code is amended to read:

124977. (a) It is the intent of the Legislature that, unless otherwise specified, the program carried out pursuant to this chapter be fully supported from fees collected for services provided by the program.

(b) (1) The department shall charge a fee to all payers for any tests or activities performed pursuant to this chapter. The amount of the fee shall be established by regulation and periodically adjusted by the director in order to meet the costs of this chapter. Notwithstanding any other provision of law, any fees charged for prenatal screening and followup services provided to persons enrolled in the Medi-Cal program, health care service plan enrollees, or persons covered by health insurance policies, shall be paid in full directly to the Genetic Disease Testing Fund, subject to all terms and conditions of each enrollee's or insured's health care service plan or insurance coverage, whichever is applicable, including, but not limited to, copayments and deductibles applicable to these services, and only if these copayments, deductibles, or limitations are disclosed to the subscriber or enrollee pursuant to the disclosure provisions of Section 1363.

(2) The department shall expeditiously undertake all steps necessary to implement the fee collection process, including personnel, contracts, and data processing, so as to initiate the fee collection process at the earliest opportunity.

(3) The director shall convene, in the most cost-efficient manner and using existing resources, a working group comprised of health insurance, health care service plan, hospital, consumer, and department representatives to evaluate newborn and prenatal screening fee billing procedures, and recommend to the department ways to improve these procedures in order to improve efficiencies and enhance revenue collections for the department and hospitals. In performing its duties, the working group may consider models in other states. The working group shall make its recommendations by March 1, 2005.

(4) Effective for services provided on and after July 1, 2002, the department shall charge a fee to the hospital of birth, or, for births not occurring in a hospital, to families of the newborn, for newborn screening and followup services. The hospital of birth and families of newborns born outside the hospital shall make payment in full to the Genetic Disease Testing Fund. The department shall not charge or bill Medi-Cal beneficiaries for services provided under this chapter.

(c) (1) The Legislature finds that timely implementation of changes in genetic screening programs and continuous maintenance of quality statewide services requires expeditious regulatory and administrative procedures to obtain the most cost-effective electronic data processing, hardware, software services, testing equipment, and testing and followup services.

(2) The expenditure of funds from the Genetic Disease Testing Fund for these purposes shall not be subject to Section 12102 of, and Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of, the Public Contract Code, or to Division 25.2 (commencing with Section 38070).

The department shall provide the Department of Finance with documentation that equipment and services have been obtained at the lowest cost consistent with technical requirements for a comprehensive high-quality program.

(3) The expenditure of funds from the Genetic Disease Testing Fund for implementation of the Tandem Mass Spectrometry screening for fatty acid oxidation, amino acid, and organic acid disorders, and screening for congenital adrenal hyperplasia may be implemented through the amendment of the Genetic Disease Branch Screening Information System contracts and shall not be subject to Chapter 3 (commencing with Section 12100) of Part 2 of Division 2 of the Public Contract Code, Article 4 (commencing with Section 19130) of Chapter 5 of Part 2 of Division 5 of Title 2 of the Government Code, and any policies, procedures, regulations or manuals authorized by those laws.

(d) (1) The department may adopt emergency regulations to implement and make specific this chapter in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For the purposes of the Administrative Procedure Act, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, these emergency regulations shall not be subject to the review and approval of the Office of Administrative Law. Notwithstanding Section 11346.1 and Section 11349.6 of the Government Code, the department shall submit these regulations directly to the Secretary of State for filing. The regulations shall become effective immediately upon filing by the Secretary of State. Regulations shall be subject to public hearing within 120 days of filing with the Secretary of State and shall comply with Sections 11346.8 and 11346.9 of the Government Code or shall be repealed.

(2) The Office of Administrative Law shall provide for the printing and publication of these regulations in the California Code of Regulations. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the regulations adopted pursuant to this chapter shall not be repealed by the Office of Administrative Law and shall remain in effect until revised or repealed by the department.

(3) The Legislature finds and declares that the health and safety of California newborns is in part dependent on an effective and adequately staffed genetic disease program, the cost of which shall be supported by the fees generated by the program.

SEC. 6.3. Section 124980 of the Health and Safety Code is amended to read:

124980. The director shall establish any regulations and standards for hereditary disorders programs as the director deems necessary to promote and protect the public health and safety. Standards shall include licensure of master level genetic counselors and doctoral level geneticists. Regulations adopted shall implement the principles established in this section. These principles shall include, but not be limited to, the following:

(a) The public, especially communities and groups particularly affected by programs on hereditary disorders, should be consulted before any regulations and standards are adopted by the department.

(b) The incidence, severity, and treatment costs of each hereditary disorder and its perceived burden by the affected community should be considered and, where appropriate, state and national experts in the medical, psychological, ethical, social, and economic effects or programs for the detection and management of hereditary disorders shall be consulted by the department.

(c) Information on the operation of all programs on hereditary disorders within the state, except for confidential information obtained from participants in the programs, shall be open and freely available to the public.

(d) Clinical testing procedures established for use in programs, facilities, and projects shall be accurate, provide maximum information, and the testing procedures selected shall produce results that are subject to minimum misinterpretation.

(e) No test or tests may be performed on any minor over the objection of the minor's parents or guardian, nor may any tests be performed unless the parent or guardian is fully informed of the purposes of testing for hereditary disorders and is given reasonable opportunity to object to the testing.

(f) No testing, except initial screening for phenylketonuria (PKU) and other diseases that may be added to the newborn screening program, shall require mandatory participation, and no testing programs shall require restriction of childbearing, and participation in a testing program shall not be a prerequisite to eligibility for, or receipt of, any other service or assistance from, or to participate in, any other program, except where necessary to determine eligibility for further programs of diagnoses of or therapy for hereditary conditions.

(g) Pretest and posttest counseling services for hereditary disorders shall be available through the program or a referral source for all persons determined to be or who believe themselves to be at risk for a hereditary disorder. Genetic counseling shall be provided by a physician, a certified advanced practice nurse with a genetics specialty, or other appropriately trained licensed health care professional and shall be nondirective, shall

emphasize informing the client, and shall not require restriction of childbearing.

(h) All participants in programs on hereditary disorders shall be protected from undue physical and mental harm, and except for initial screening for phenylketonuria (PKU) and other diseases that may be added to newborn screening programs, shall be informed of the nature of risks involved in participation in the programs, and those determined to be affected with genetic disease shall be informed of the nature, and where possible the cost, of available therapies or maintenance programs, and shall be informed of the possible benefits and risks associated with these therapies and programs.

(i) All testing results and personal information generated from hereditary disorders programs shall be made available to an individual over 18 years of age, or to the individual's parent or guardian. If the individual is a minor or incompetent, all testing results that have positively determined the individual to either have, or be a carrier of, a hereditary disorder shall be given through a physician or other source of health care.

(j) All testing results and personal information from hereditary disorders programs obtained from any individual, or from specimens from any individual, shall be held confidential and be considered a confidential medical record except for information that the individual, parent, or guardian consents to be released, provided that the individual is first fully informed of the scope of the information requested to be released, of all of the risks, benefits, and purposes for the release, and of the identity of those to whom the information will be released or made available, except for data compiled without reference to the identity of any individual, and except for research purposes, provided that pursuant to Subpart A (commencing with Section 46.101) of Part 46 of Title 45 of the Code of Federal Regulations entitled ''Basic HHS Policy for Protection of Human Subjects,'' the research has first been reviewed and approved by an institutional review board that certifies the approval to the custodian of the information and further certifies that in its judgment the information is of such potentially substantial public health value that modification of the requirement for legally effective prior informed consent of the individual is ethically justifiable.

(k) A physician providing information to patients on expanded newborn screening shall disclose to the parent the physician's financial interest, if any, in the laboratory to which the patient is being referred.

(*l*) An individual whose confidentiality has been breached as a result of any violation of the provisions of the Hereditary Disorders Act, as defined in subdivision (b) of Section 27, may recover compensatory and civil damages. Any person who negligently breaches the confidentiality of an individual tested under this article shall be subject to civil damages

of not more than ten thousand dollars ($10,000), reasonable attorney's fees, and the costs of litigation. Any person who knowingly breaches the confidentiality of an individual tested under this article shall be subject to payment of compensatory damages, and in addition, may be subject to civil damages of fifty thousand dollars ($50,000), reasonable attorney's fees, and the costs of litigation, or imprisonment in the county jail of not more than one year. If the offense is committed under false pretenses, the person may be subject to a fine of not more than one hundred thousand dollars ($100,000), imprisonment in the county jail of not more than one year, or both. If the offense is committed with the intent to sell, transfer, or use individually identifiable health information for commercial advantage, personal gain, or malicious harm, the person may be subject to a fine of not more than two hundred fifty thousand dollars ($250,000), imprisonment in the county jail of not more than one year, or both.

(m) ''Genetic counseling'' as used in this section shall not include communications that occur between patients and appropriately trained and competent licensed health care professionals, such as physicians, registered nurses, and physicians assistants who are operating within the scope of their license and qualifications as defined by their licensing authority.

SEC. 6.4. Section 125000 of the Health and Safety Code is amended to read:

125000. (a) It is the policy of the State of California to make every effort to detect, as early as possible, phenylketonuria and other preventable heritable or congenital disorders leading to mental retardation or physical defects.

The department shall establish a genetic disease unit, that shall coordinate all programs of the department in the area of genetic disease. The unit shall promote a statewide program of information, testing, and counseling services and shall have the responsibility of designating tests and regulations to be used in executing this program.

The information, tests, and counseling for children shall be in accordance with accepted medical practices and shall be administered to each child born in California once the department has established appropriate regulations and testing methods. The information, tests, and counseling for pregnant women shall be in accordance with accepted medical practices and shall be offered to each pregnant woman in California once the department has established appropriate regulations and testing methods. These regulations shall follow the standards and principles specified in Section 124980. The department may provide laboratory testing facilities or contract with any laboratory that it deems qualified to conduct tests required under this section. However, notwithstanding Section 125005, provision of laboratory testing

facilities by the department shall be contingent upon the provision of funding therefor by specific appropriation to the Genetic Disease Testing Fund enacted by the Legislature. If moneys appropriated for purposes of this section are not authorized for expenditure to provide laboratory facilities, the department may nevertheless contract to provide laboratory testing services pursuant to this section and shall perform laboratory services, including, but not limited to, quality control, confirmatory, and emergency testing, necessary to ensure the objectives of this program.

(b) The department shall charge a fee for any tests performed pursuant to this section. The amount of the fee shall be established and periodically adjusted by the director in order to meet the costs of this section.

(c) The department shall inform all hospitals or physicians and surgeons, or both, of required regulations and tests and may alter or withdraw any of these requirements whenever sound medical practice so indicates. To the extent practicable, the department shall provide notice to hospitals and other payers in advance of any increase in the fees charged for the program.

(d) This section shall not apply if a parent or guardian of the newborn child objects to a test on the ground that the test conflicts with his or her religious beliefs or practices.

(e) The genetic disease unit is authorized to make grants or contracts or payments to vendors approved by the department for all of the following:

(1) Testing and counseling services.

(2) Demonstration projects to determine the desirability and feasibility of additional tests or new genetic services.

(3) To initiate the development of genetic services in areas of need.

(4) To purchase or provide genetic services from any sums as are appropriated for this purpose.

(f) The genetic disease unit shall evaluate and prepare recommendations on the implementation of tests for the detection of hereditary and congenital diseases, including, but not limited to, biotinidase deficiency and cystic fibrosis. The genetic disease unit shall also evaluate and prepare recommendations on the availability and effectiveness of preventative followup interventions, including the use of specialized medically necessary dietary products.

It is the intent of the Legislature that funds for the support of the evaluations and recommendations required pursuant to this subdivision, and for the activities authorized pursuant to subdivision (e), shall be provided in the annual Budget Act appropriation from the Genetic Disease Testing Fund.

(g) Health care providers that contract with a prepaid group practice health care service plan that annually has at least 20,000 births among its membership, may provide, without contracting with the department, any or all of the testing and counseling services required to be provided under this section or the regulations adopted pursuant thereto, if the services meet the quality standards and adhere to the regulations established by the department and the plan pays that portion of a fee established under this section that is directly attributable to the department's cost of administering the testing or counseling service and to any required testing or counseling services provided by the state for plan members. The payment by the plan, as provided in this subdivision, shall be deemed to fulfill any obligation the provider or the provider's patient may have to the department to pay a fee in connection with the testing or counseling service.

(h) The department may appoint experts in the area of genetic screening, including, but not limited to, cytogenetics, molecular biology, prenatal, specimen collection, and ultrasound to provide expert advice and opinion on the interpretation and enforcement of regulations adopted pursuant to this section. These experts shall be designated agents of the state with respect to their assignments. These experts shall receive no salary, but shall be reimbursed for expenses associated with the purposes of this section. All expenses of the experts for the purposes of this section shall be paid from the Genetic Disease Testing Fund.

SEC. 6.5. Section 125001 of the Health and Safety Code is amended to read:

125001. (a) The department shall establish a program for the development, provision, and evaluation of genetic disease testing, and may provide laboratory testing facilities or make grants to, contract with, or make payments to, any laboratory that it deems qualified and cost-effective to conduct testing or with any metabolic specialty clinic to provide necessary treatment with qualified specialists. The program shall provide genetic screening and followup services for persons who have the screening.

(b) The department shall expand statewide screening of newborns to include tandem mass spectrometry screening for fatty acid oxidation, amino acid, and organic acid disorders and congenital adrenal hyperplasia as soon as possible. The department shall provide information with respect to these disorders and testing resources available, to all women receiving prenatal care and to all women admitted to a hospital for delivery. If the department is unable to provide this statewide screening by July 1, 2005, the department shall temporarily obtain these testing services through a competitive bid process from one or more public or private laboratories that meet the department's requirements for testing, quality assurance, and reporting.

If the department determines that contracting for these services is more cost-effective, and meets the other requirements of this chapter, than purchasing the tandem mass spectrometry equipment themselves, the department shall contract with one or more public or private laboratories.

(c) The department shall report to the Legislature regarding the progress of the program on or before July 1, 2006. The report shall include the costs for screening, followup, and treatment as compared to costs and morbidity averted for each condition tested for in the program.

SEC. 7. Section 127671 of the Health and Safety Code is amended to read:

127671. (a) The Governor shall convene the California Health Care Quality Improvement and Cost Containment Commission, hereinafter referred to as ''the commission,'' to research and recommend appropriate and timely strategies for promoting high quality care and containing health care costs.

(b) The commission shall be composed of 27 members who are knowledgeable about the health care system and health care spending.

(c) The Governor shall appoint 17 members of the commission, as follows:

(1) Three representatives of California's business community, including at least one representative from a small business.

(2) Two representatives from organized labor, one of whom represents health care workers.

(3) Two representatives of consumers.

(4) Two health care practitioners, including at least one physician.

(5) One representative of the disabilities community.

(6) One hospital industry representative.

(7) One pharmaceutical industry representative.

(8) Two representatives of the health insurance industry, one with expertise in managed health care delivery systems and one with expertise in health insurance underwriting and rating.

(9) One representative of academic or health care policy research institutions.

(10) One health care economist.

(11) One expert in disease management techniques and wellness programs.

(d) The Senate Committee on Rules shall appoint four members, with two members from the majority party and two from the minority party.

(e) The Speaker of the Assembly shall appoint four members, of which two members shall be the Chair and Vice Chair of the Assembly Committee on Health.

(f) The Secretary of the Health and Human Services Agency and the Director of the Department of Managed Health Care shall serve as members of the commission.

(g) The Governor shall appoint the chairperson of the commission.

(h) The commission shall, on or before January 1, 2006, issue a report to the Legislature and the Governor making recommendations for health care quality improvement and cost containment. The commission shall, at a minimum, examine and address the following issues:

(1) Assessing California health care needs and available resources.

(2) Lowering the cost of health care coverage.

(3) Increasing patient choices of health coverage options and providers.

(4) Improving the quality of health care.

(5) Increasing the transparency of health care costs and the relative efficiency with which care is delivered.

(6) Potential for integration with workers' compensation insurance.

(7) Use of disease management, wellness, prevention, and other innovative programs to keep people healthy while reducing costs and improving health outcomes.

(8) Consolidation of existing state programs to achieve efficiencies where possible.

(9) Efficient utilization of prescription drugs and technology.

(i) Notwithstanding any other provision of law, the members of the task force shall receive no per diem or travel expense reimbursement, or any other expense reimbursement.

SEC. 7.3. Section 12693.43 of the Insurance Code is amended to read:

12693.43. (a) Applicants applying to the purchasing pool shall agree to pay family contributions, unless the applicant has a family contribution sponsor. Family contribution amounts consist of the following two components:

(1) The flat fees described in subdivision (b) or (d).

(2) Any amounts that are charged to the program by participating health, dental, and vision plans selected by the applicant that exceed the cost to the program of the highest cost Family Value Package in a given geographic area.

(b) In each geographic area, the board shall designate one or more Family Value Packages for which the required total family contribution is:

(1) Seven dollars ($7) per child with a maximum required contribution of fourteen dollars ($14) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Nine dollars ($9) per child with a maximum required contribution of twenty-seven dollars ($27) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level and for applicants on behalf of children described in clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 12693.70.

(3) On and after July 1, 2005, fifteen dollars ($15) per child with a maximum required contribution of forty-five dollars ($45) per month per family for applicants with annual household income to which subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is applicable. Notwithstanding any other provision of law, if an application with an effective date prior to July 1, 2005, was based on annual household income to which subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is applicable, then this subparagraph shall be applicable to the applicant on July 1, 2005, unless subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is no longer applicable to the relevant family income. The program shall provide prior notice to any applicant for currently enrolled subscribers whose premium will increase on July 1, 2005, pursuant to this subparagraph and, prior to the date the premium increase takes effect, shall provide that applicant with an opportunity to demonstrate that subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is no longer applicable to the relevant family income.

(c) Combinations of health, dental, and vision plans that are more expensive to the program than the highest cost Family Value Package may be offered to and selected by applicants. However, the cost to the program of those combinations that exceeds the price to the program of the highest cost Family Value Package shall be paid by the applicant as part of the family contribution.

(d) The board shall provide a family contribution discount to those applicants who select the health plan in a geographic area that has been designated as the Community Provider Plan. The discount shall reduce the portion of the family contribution described in subdivision (b) to the following:

(1) A family contribution of four dollars ($4) per child with a maximum required contribution of eight dollars ($8) per month per family for applicants with annual household incomes up to and including 150 percent of the federal poverty level.

(2) Six dollars ($6) per child with a maximum required contribution of eighteen dollars ($18) per month per family for applicants with annual household incomes greater than 150 percent and up to and including 200 percent of the federal poverty level and for applicants on behalf of children described in clause (ii) of subparagraph (A) of paragraph (6) of subdivision (a) of Section 12693.70.

(3) On and after July 1, 2005, twelve dollars ($12) per child with a maximum required contribution of thirty-six dollars ($36) per month per family for applicants with annual household income to which subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is applicable. Notwithstanding any other provision of law, if an application with an effective date prior to July 1, 2005, was based on annual household income to which subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is applicable, then this subparagraph shall be applicable to the applicant on July 1, 2005, unless subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is no longer applicable to the relevant family income. The program shall provide prior notice to any applicant for currently enrolled subscribers whose premium will increase on July 1, 2005, pursuant to this subparagraph and, prior to the date the premium increase takes effect, shall provide that applicant with an opportunity to demonstrate that subparagraph (B) of paragraph (6) of subdivision (a) of Section 12693.70 is no longer applicable to the relevant family income.

(e) Applicants, but not family contribution sponsors, who pay three months of required family contributions in advance shall receive the fourth consecutive month of coverage with no family contribution required.

(f) Applicants, but not family contribution sponsors, who pay the required family contributions by an approved means of electronic fund transfer shall receive a 25-percent discount from the required family contributions.

(g) It is the intent of the Legislature that the family contribution amounts described in this section comply with the premium cost sharing limits contained in Section 2103 of Title XXI of the Social Security Act. If the amounts described in subdivision (a) are not approved by the federal government, the board may adjust these amounts to the extent required to achieve approval of the state plan.

(h) The adoption and one readoption of regulations to implement paragraph (3) of subdivision (b) and paragraph (3) of subdivision (d) shall be deemed to be an emergency and necessary for the immediate preservation of public peace, health, and safety, or general welfare for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the board is hereby exempted from the requirement that it describe specific facts showing the need for immediate action and from review by the Office of Administrative Law. For purpose of subdivision (e) of Section 11346.1 of the Government code, the 120-day period, as applicable to the effective period of an emergency regulatory action and submission of specified materials to the Office of Administrative law, is hereby extended to 180 days.

SEC. 7.5. Section 12699.10 of the Insurance Code is repealed.

SEC. 8. Section 4094.2 of the Welfare and Institutions Code is amended to read:

4094.2. (a) For the purpose of establishing payment rates for community treatment facility programs, the private nonprofit agencies selected to operate these programs shall prepare a budget that covers the total costs of providing residential care and supervision and mental health services for their proposed programs. These costs shall include categories that are allowable under California's Foster Care program and existing programs for mental health services. They shall not include educational, nonmental health medical, and dental costs.

(b) Each agency operating a community treatment facility program shall negotiate a final budget with the local mental health department in the county in which its facility is located (the host county) and other local agencies, as appropriate. This budget agreement shall specify the types and level of care and services to be provided by the community treatment facility program and a payment rate that fully covers the costs included in the negotiated budget. All counties that place children in a community treatment facility program shall make payments using the budget agreement negotiated by the community treatment facility provider and the host county.

(c) A foster care rate shall be established for each community treatment facility program by the State Department of Social Services. These rates shall be established using the existing foster care ratesetting system for group homes, with modifications designed as necessary. It is anticipated that all community treatment facility programs will offer the level of care and services required to receive the highest foster care rate provided for under the current group home ratesetting system.

(d) For the 2001–02 fiscal year, the 2002–03 fiscal year, the 2003–04 fiscal year, and the 2004–05 fiscal year, community treatment facility programs shall also be paid a community treatment facility supplemental rate of up to two thousand five hundred dollars ($2,500) per child per month on behalf of children eligible under the foster care program and children placed out of home pursuant to an individualized education program developed under Section 7572.5 of the Government Code. Subject to the availability of funds, the supplemental rate shall be shared by the state and the counties. Counties shall be responsible for paying a county share of cost equal to 60 percent of the community treatment rate for children placed by counties in community treatment facilities and the state shall be responsible for 40 percent of the community treatment facility supplemental rate. The community treatment facility supplemental rate is intended to supplement, and not to supplant, the payments for which children placed in community treatment facilities are eligible to receive under the foster care program and the existing programs for mental health services.

(e) For initial ratesetting purposes for community treatment facility funding, the cost of mental health services shall be determined by deducting the foster care rate and the community treatment facility supplemental rate from the total allowable cost of the community treatment facility program. Payments to certified providers for mental health services shall be based on eligible services provided to children who are Medi-Cal beneficiaries, up to the statewide maximum allowances for these services.

(f) The department shall provide the community treatment facility supplemental rates to the counties for advanced payment to the community treatment facility providers in the same manner as the regular foster care payment and within the same required payment time limits.

(g) In order to facilitate the study of the costs of community treatment facilities, licensed community treatment facilities shall provide all documents regarding facility operations, treatment, and placements requested by the department.

(h) It is the intent of the Legislature that the department and the State Department of Social Services work to maximize federal financial participation in funding for children placed in community treatment facilities through funds available pursuant to Titles IV-E and XIX of the federal Social Security Act (Title 42 U.S.C. Sec. 670 and following and Sec. 1396 and following) and other appropriate federal programs.

(i) The department and the State Department of Social Services may adopt emergency regulations necessary to implement joint protocols for the oversight of community treatment facilities, to modify existing licensing regulations governing reporting requirements and other procedural and administrative mandates to take into account the seriousness and frequency of behaviors that are likely to be exhibited by the seriously emotionally disturbed children placed in community treatment facility programs, to modify the existing foster care ratesetting regulations, and to pay the community treatment facility supplemental rate. The adoption of these regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, and general welfare. The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 180 days unless the adopting agency complies with all the provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, as required by subdivision (e) of Section 11346.1 of the Government Code.

SEC. 8.1. Section 4631.5 of the Welfare and Institutions Code is amended to read:

4631.5. (a) The Legislature finds and declares both of the following:

(1) The state is facing a fiscal crisis that will require an unallocated reduction in the 2004–05 fiscal year for regional centers' purchase of service budgets of seven million dollars ($7,000,000).

(2) Even when the state faces an unprecedented fiscal crisis, the services and supports set forth in the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)) shall continue to be provided to individuals with developmental disabilities in accordance with state and federal statutes, regulations, and case law, including Association for Retarded Citizens v. Department of Developmental Services (1985) 38 Cal.3d 384.

(b) It is the intent of the Legislature that actions taken pursuant to this section shall not eliminate an individual's eligibility, adversely affect an individual's health and safety, or interfere with an individual's rights as described in Section 4502.

(c) In order to ensure that services to eligible consumers are available throughout the fiscal year, regional centers shall administer their contracts within the level of funding appropriated by the annual Budget Act.

(d) Within 30 days of the enactment of the annual Budget Act, and after consultation with stakeholder organizations, the department shall determine the amount of unallocated reduction that each regional center shall make in its purchase-of-service budget and shall provide each regional center with guidelines, technical assistance, and a variety of options for reducing operations and purchase of service costs.

(e) Within 60 days of the enactment of the annual Budget Act, each regional center shall develop and submit a plan to the department describing in detail how it intends to absorb the unallocated reduction and achieve savings necessary to provide services to eligible consumers throughout the fiscal year within the limitations of the funds allocated. Prior to adopting the plan, each regional center shall hold a public hearing in order to receive comment on the plan. The regional center shall provide notice to the community at least 10 days in advance of the public hearing. The regional center shall summarize and respond to the public testimony in its plan.

(f) A regional center shall implement components of its plans upon approval of the department. Within 30 days of receipt of the plan, the department shall review and approve, or require modification of, portions of the regional center's plan.

(g) This section shall become inoperative on July 1, 2006, and, as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8.2. Section 4643 of the Welfare and Institutions Code is amended to read:

4643. (a) If assessment is needed, prior to July 1, 2005, the assessment shall be performed within 120 days following initial intake. Assessment shall be performed as soon as possible and in no event more than 60 days following initial intake where any delay would expose the client to unnecessary risk to his or her health and safety or to significant further delay in mental or physical development, or the client would be at imminent risk of placement in a more restrictive environment. Assessment may include collection and review of available historical diagnostic data, provision or procurement of necessary tests and evaluations, and summarization of developmental levels and service needs and is conditional upon receipt of the release of information specified in subdivision (b). On and after July 1, 2005, the assessment shall be performed within 60 days following intake and if unusual circumstances prevent the completion of assessment within 60 days following intake, this assessment period may be extended by one 30-day period with the advance written approval of the department.

(b) In determining if an individual meets the definition of developmental disability contained in subdivision (a) of Section 4512, the regional center may consider evaluations and tests, including, but not limited to, intelligence tests, adaptive functioning tests, neurological and neuropsychological tests, diagnostic tests performed by a physician, psychiatric tests, and other tests or evaluations that have been performed by, and are available from, other sources.

SEC. 8.3. Section 4648.4 of the Welfare and Institutions Code is amended to read:

4648.4. Notwithstanding any other provision of law or regulation, during the 2004–05 fiscal year, no regional center may pay any provider of the following services or supports a rate that is greater than the rate that is in effect on or after June 30, 2004, unless the increase is required by a contract between the regional center and the vendor that is in effect on June 30, 2004, or the regional center demonstrates that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization:

(a) Supported living services.
(b) Transportation, including travel reimbursement.
(c) Socialization training programs.
(d) Behavior intervention training.
(e) Community integration training programs.
(f) Community activities support services.
(g) Mobile day programs.
(h) Creative art programs.
(i) Supplemental day services program supports.

(j) Adaptive skills trainers.

(k) Independent living specialists.

SEC. 8.4. Section 4681.5 of the Welfare and Institutions Code is amended to read:

4681.5. Notwithstanding any other provision of law or regulation, during the 2004–05 fiscal year, no regional center may approve any service level for a residential service provider, as defined in Section 56005 of Title 17 of the California Code of Regulations, if the approval would result in an increase in the rate to be paid to the provider that is greater than the rate that is in effect on or after June 30, 2004, unless the regional center demonstrates to the department that the approval is necessary to protect the consumer's health or safety and the department has granted prior written authorization.

SEC. 8.5. Section 4691.6 of the Welfare and Institutions Code is amended to read:

4691.6. (a) Notwithstanding any other provision of law or regulation, during the 2004–05 fiscal year, the department may not establish any permanent payment rate for a community-based day program or in-home respite service agency provider that has a temporary payment rate in effect on June 30, 2004, if the permanent payment rate would be greater than the temporary payment rate in effect on or after June 30, 2004, unless the regional center demonstrates to the department that the permanent payment rate is necessary to protect the consumers' health or safety.

(b) Notwithstanding any other provision of law or regulation, during the 2004–05 fiscal year, neither the department nor any regional center may approve any program design modification or revendorization for a community-based day program or in-home respite service agency provider that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2004, unless the regional center demonstrates that the program design modification or revendorization is necessary to protect the consumers' health or safety and the department has granted prior written authorization.

(c) Notwithstanding any other provision of law or regulation, during the 2004–05 fiscal year, the department may not approve an anticipated rate adjusted for a community-based day program or in-home respite service agency provider that would result in an increase in the rate to be paid to the vendor from the rate that is in effect on or after June 30, 2004, unless the regional center demonstrates that the anticipated rate adjustment is necessary to protect the consumers' health or safety.

(d) Notwithstanding any other provision of law or regulation, during the 2004–05 fiscal year, the department may not approve any rate adjustment for a habilitation services program that would result in an increase in the rate to be paid to the vendor from the rate that is in effect

on or after June 30, 2004, unless the regional center demonstrates that the rate adjustment is necessary to protect the consumers' health and safety and the department has granted prior written authorization.

SEC. 8.6. Section 4781.5 of the Welfare and Institutions Code is amended to read:

4781.5. For the 2004–05 and 2005–06 fiscal years only, a regional center may not expend any purchase of service funds for the startup of any new program unless the expenditure is necessary to protect the consumer's health or safety or because of other extraordinary circumstances, and the department has granted prior written authorization for the expenditure. This provision shall not apply to any of the following:

(a) The purchase of services funds allocated as part of the department's community placement plan process.

(b) Expenditures for the startup of new programs made pursuant to a contract entered into before July 1, 2002.

SEC. 9. Section 4783 is added to the Welfare and Institutions Code, to read:

4783. (a) (1) The Family Cost Participation Program is hereby created in the State Department of Developmental Services for the purpose of assessing a cost participation to parents, as defined in Section 50215 of Title 17 of the California Code of Regulations, who have a child to whom all of the following applies:

(A) The child has a developmental disability.

(B) The child is three years of age through 17 years of age.

(C) The child lives in the parents' home.

(D) The child receives services and supports purchased through the regional center.

(E) The child is not eligible for Medi-Cal.

(2) Notwithstanding any other provision of law, a parent described in subdivision (a) shall participate in the Family Cost Participation Program established pursuant to this section.

(b) (1) The department shall develop and establish a Family Cost Participation Schedule that shall be used by regional centers to assess the parents' cost participation. The schedule shall consist of a sliding scale for families with an annual gross income not less than 400 percent of the federal poverty guideline, and be adjusted for the level of annual gross income and the number of persons living in the family home.

(2) The schedule established pursuant to this section shall be exempt from the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Family cost participation assessments shall only be applied to respite, day care, and camping services that are included in the child's individual program plan.

(d) If there is more than one minor child living in the parents' home and receiving services or supports paid for by the regional center, or living in a 24-hour out-of-home facility, including a developmental center, the assessed amount shall be adjusted as follows:

(1) A parent that meets the criteria specified in subdivision (b) with two children shall be assessed at 75 percent of the respite, day care, and camping services in each child's individual program plan for each child living at home.

(2) A parent that meets the criteria specified in subdivision (b) with three children shall be assessed at 50 percent of the respite, day care, and camping services included in each child's individual program plan for each child living at home.

(3) A parent that meets the criteria specified in subdivision (b) with four children shall be assessed 25 percent of the respite, day care, and camping services included in each child's individual program plan for each child living at home.

(4) A parent that meets the criteria specified in subdivision (b) with more than four children shall be exempt from participation in the Family Cost Participation Program.

(e) For each child, the amount of cost participation shall be less than the amount of the parental fee that the parent would pay if the child lived in a 24-hour, out-of-home facility.

(f) Commencing January 1, 2005, each regional center shall be responsible for administering the Family Cost Participation Program.

(g) Family cost participation assessments or reassessments shall be conducted as follows:

(1) (A) By December 31, 2005, a regional center shall assess the cost participation for all parents of current consumers who meet the criteria specified in this section. A regional center shall use the most recent individual program plan for this purpose.

(B) A regional center shall assess the cost participation for parents of newly identified consumers at the time of the initial individual program plan.

(C) Reassessments for cost participation shall be conducted as part of the individual program plan review pursuant to subdivision (b) of Section 4646.

(D) The parents are responsible for notifying the regional center when a change in family income occurs that would result in a change in the assessed amount of cost participation.

(2) Parents shall self-certify their gross annual income to the regional center by providing copies of W-2 Wage Earners Statements, payroll stubs, a copy of the prior year's state income tax return, or other documents and proof of other income.

(3) A regional center shall notify parents of the parents' assessed cost participation within 10 working days of receipt of the parents' complete income documentation.

(4) Parents who have not provided copies of income documentation pursuant to paragraph (2) shall be assessed the maximum cost participation based on the highest income level adjusted for family size until such time as the appropriate income documentation is provided. Parents who subsequently provide income documentation that results in a reduction in their cost participation shall be reimbursed for the actual cost difference incurred for services identified in the individual program plan for respite, day care, and camping services, for 90 calendar days preceding the reassessment. The actual cost difference is the difference between the maximum cost participation originally assessed and the reassessed amount using the parents' complete income documentation, that is substantiated with receipts showing that the services have been purchased by the parents.

(5) The executive director of the regional center may grant a cost participation adjustment for parents who incur an unavoidable and uninsured catastrophic loss with direct economic impact on the family or who substantiate, with receipts, significant unreimbursed medical costs associated with care for a child who is a regional center consumer. A redetermination of the cost participation adjustment shall be made at least annually.

(h) A provider of respite, day care, or camping services shall not charge a rate for the parents' share of cost that is higher than the rate paid by the regional center for its share of cost.

(i) The department shall develop, and regional centers shall use, all forms and documents necessary to administer the program established pursuant to this section. The forms and documents shall be posted on the department's Web site. A regional center shall provide appropriate materials to parents at the initial individual program plan meeting and subsequent individual program plan review meetings. These materials shall include a description of the Family Cost Participation Program.

(j) The department shall include an audit of the Family Cost Participation Program during its audit of a regional center.

(k) (1) Parents may appeal an error in the amount of the parents' cost participation to the executive director of the regional center within 30 days of notification of the amount of the assessed cost participation. The parents may appeal to the Director of Developmental Services, or his or her designee, any decision by the executive director made pursuant to this subdivision within 15 days of receipt of the written decision of the executive director.

(2) Parents who dispute the decision of the executive director pursuant to paragraph (5) of subdivision (g) shall have a right to a fair

hearing as described in, and the regional center shall provide notice pursuant to, Chapter 7 (commencing with Section 4700). This paragraph shall become inoperative on July 1, 2006.

(3) On and after July 1, 2006, a parent described in paragraph (2) shall have the right to appeal the decision of the executive director to the Director of Developmental Services, or his or her designee, within 15 days of receipt of the written decision of the executive director.

(*l*) The department may adopt emergency regulations to implement this section. The adoption, amendment, repeal, or readoption of a regulation authorized by this section is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the requirement that it describe specific facts showing the need for immediate action. A certificate of compliance for these implementing regulations shall be filed within 24 months following the adoption of the first emergency regulations filed pursuant to this subdivision.

(m) By April 1, 2005, and annually thereafter, the department shall report to the appropriate fiscal and policy committees of the Legislature on the status of the implementation of the Family Cost Participation Program established under this section. On and after April 1, 2006, the report shall contain all of the following:

(1) The annual total purchase of services savings attributable to the program per regional center.

(2) The annual costs to the department and each regional center to administer the program.

(3) The number of families assessed a cost participation per regional center.

(4) The number of cost participation adjustments granted pursuant to paragraph (5) of subdivision (g) per regional center.

(5) The number of appeals filed pursuant to subdivision (k) and the number of those appeals granted, modified, or denied.

(n) This section shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 9.4. Section 4865.1 is added to the Welfare and Institutions Code, to read:

4865.1. (a) A regional center shall continue to pay the rate in effect as of June 30, 2004, for a supported employment placement group composed of a coach-to-client ratio of 1:3 when the provider submits to the State Department of Developmental Services and the regional center, by July 30, 2004, documentation that all of the following conditions apply:

(1) The group was established prior to July 1, 2002.

(2) The group was at the 1:3 ratio on May 1, 2004.

(3) The employer will only accommodate a group of three.

(b) In consultation with the regional center, the State Department of Developmental Services shall determine whether the requirements of this section have been met. The department's decision shall be final.

(c) Groups paid under this section shall meet the requirements of subdivision (r) of Section 4851 by July 1, 2005, or be subject to termination of funding pursuant to subdivision (b) of Section 4860.

SEC. 9.5. Section 5775 of the Welfare and Institutions Code is amended to read:

5775. (a) Notwithstanding any other provision of state law, the State Department of Mental Health shall implement managed mental health care for Medi-Cal beneficiaries through fee-for-service or capitated rate contracts with mental health plans, including individual counties, counties acting jointly, any qualified individual or organization, or a nongovernmental entity. A contract may be exclusive and may be awarded on a geographic basis.

(b) Two or more counties acting jointly may agree to deliver or subcontract for the delivery of mental health services. The agreement may encompass all or any portion of the mental health services provided pursuant to this part. This agreement shall not relieve the individual counties of financial responsibility for providing these services. Any agreement between counties shall delineate each county's responsibilities and fiscal liability.

(c) The department shall offer to contract with each county for the delivery of mental health services to that county's Medi-Cal beneficiary population prior to offering to contract with any other entity, upon terms at least as favorable as any offered to a noncounty contract provider. If a county elects not to contract with the department, does not renew its contract, or does not meet the minimum standards set by the department, the department may elect to contract with any other governmental or nongovernmental entity for the delivery of mental health services in that county and may administer the delivery of mental health services until a contract for a mental health plan is implemented. The county may not subsequently contract to provide mental health services under this part unless the department elects to contract with the county.

(d) If a county does not contract with the department to provide mental health services, the county shall transfer the responsibility for community Medi-Cal reimbursable mental health services and the anticipated county matching funds needed for community Medi-Cal mental health services in that county to the department. The amount of the anticipated county matching funds shall be determined by the department in consultation with the county, and shall be adjusted

annually. The amount transferred shall be based on historical cost, adjusted for changes in the number of Medi-Cal beneficiaries and other relevant factors. The anticipated county matching funds shall be used by the department to contract with another entity for mental health services, and shall not be expended for any other purpose but the provision of those services and related administrative costs. The county shall continue to deliver non-Medi-Cal reimbursable mental health services in accordance with this division, and subject to subdivision (i) of Section 5777.

(e) Whenever the department determines that a mental health plan has failed to comply with this part or any regulations adopted pursuant to this part that implement this part, the department may impose sanctions, including, but not limited to, fines, penalties, the withholding of payments, special requirements, probationary or corrective actions, or any other actions deemed necessary to prompt and ensure contract and performance compliance. If fines are imposed by the department, they may be withheld from the state matching funds provided to a mental health plan for Medi-Cal mental health services.

(f) Notwithstanding any other provision of law, emergency regulations adopted pursuant to Section 14680 to implement the second phase of mental health managed care as provided in this part shall remain in effect until January 1, 2006.

(g) The department shall convene at least two public hearings to clarify new federal regulations recently enacted by the federal Centers for Medicare and Medicaid Services that affect the state's second phase of mental health managed care and shall report to the Legislature on the results of these hearings through the 2005–06 budget deliberations.

(h) The department may adopt emergency regulations necessary to implement Part 438 (commencing with Section 438.1) of Subpart A of Subchapter C of Chapter IV of Title 42 of the Code of Federal Regulations, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. The adoption of emergency regulations to implement this part, that are filed with the Office of Administrative Law within one year of the date on which the act that amended this subdivision in 2003 took effect, shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, and safety, or general welfare, and shall remain in effect for no more than 180 days.

SEC. 10. Section 14007.9 of the Welfare and Institutions Code is amended to read:

14007.9. (a) The department shall adopt the option made available under Section 1902(a)(10)(A)(ii)(XIII) of the federal Social Security Act (42 U.S.C. Sec. 1396a(a)(10)(A)(ii)(XIII). In order to be eligible for

benefits under this section, an individual shall be required to meet all of the following requirements:

(1) His or her net countable income is less than 250 percent of the federal poverty level for one person or, if the deeming of spousal income applies to the individual, his or her net countable income is less than 250 percent of the federal poverty level for two persons.

(2) He or she is disabled under Title II of the Social Security Act (Subch. 2 (commencing with Sec. 401), Ch. 7, Title 42 U.S.C.), Title XVI of the Social Security Act (Subch. 16 (commencing with Sec. 1381), Ch. 7, Title 42, U.S.C.), or Section 1902(v) of the Social Security Act (42 U.S.C. Sec. 1396a(v)). An individual shall be determined to be eligible under this section without regard to his or her ability to engage in, or actual engagement in, substantial gainful activity, as defined in Section 223(d)(4) of the Social Security Act (42 U.S.C. Sec. 423(d)(4)).

(3) Except as otherwise provided in this section, his or her net nonexempt resources, which shall be determined in accordance with the methodology used under Title XVI of the federal Social Security Act (42 U.S.C. Sec. 1381 et seq.), are not in excess of the limits provided for under those provisions.

(b) (1) Countable income shall be determined under Section 1612 of the Social Security Act (42 U.S.C. Sec. 1382a), except that the individual's disability income, including all federal and state disability benefits and private disability insurance, shall be exempted. Resources excluded under Section 1613 of the Social Security Act (42 U.S.C. Sec. 1382b) shall be disregarded.

(2) Resources in the form of employer or individual retirement arrangements authorized under the Internal Revenue Code shall be exempted as authorized by Section 1902(r) of the Social Security Act (42 U.S.C. Sec. 1396a(r)).

(c) Medi-Cal benefits provided under this chapter pursuant to this section shall be available in the same amount, duration, and scope as those benefits are available for persons who are eligible for Medi-Cal benefits as categorically needy persons and as specified in Section 14007.5.

(d) Individuals eligible for Medi-Cal benefits under this section shall be subject to the payment of premiums determined under this subdivision. The department shall establish sliding-scale premiums that are based on countable income, with a minimum premium of twenty dollars ($20) per month and a maximum premium of two hundred fifty dollars ($250) per month, and shall, by regulations, annually adjust the premiums. Prior to adjustment of any premiums pursuant to this subdivision, the department shall submit a report of proposed premium adjustments to the appropriate committees of the Legislature as part of the annual budget act process.

(e) The department shall adopt regulations specifying the process for discontinuance of eligibility under this section for nonpayment of premiums for more than two months by a beneficiary.

(f) In order to implement the collection of premiums under this section, the department may develop and execute a contract with a public or private entity to collect premiums, or may amend any existing or future premium-collection contract that it has executed. Notwithstanding any other provision of law, any contract developed and executed or amended pursuant to this subdivision is exempt from the approval of the Director of General Services and from the Public Contract Code.

(g) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement, without taking any regulatory action, this section by means of an all-county letter or similar instruction. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(h) Notwithstanding any other provision of law, this section shall be implemented only if, and to the extent that, the department determines that federal financial participation is available pursuant to Title XIX of the federal Social Security Act (42 U.S.C. Sec. 1396 et seq.).

(i) Subject to subdivision (h), this section shall be implemented commencing April 1, 2000.

(j) This section shall become inoperative on September 1, 2008, and as of January 1, 2009, is repealed, unless a later enacted statute that is enacted on or before January 1, 2009, extends or deletes the dates on which it becomes inoperative and is repealed.

SEC. 10.3. Section 14018.7 of the Welfare and Institutions Code is amended to read:

14018.7. (a) Notwithstanding any other provision of law, neither a member of the governing body of the commission nor a member of any advisory panel to the governing body shall be deemed to be interested in a contract entered into by the commission within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all of the following apply:

(1) The board of supervisors or the governing body appointed the individual to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(2) The contract authorizes the individual or the organization the individual represents to provide services under the local initiative.

(3) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the individual was appointed to represent.

(4) The individual does not influence or attempt to influence any advisory panel, the governing body, or any member of the governing body to enter into the contract.

(5) The individual discloses the interest to the governing body and the advisory panel, if applicable, and abstains from voting on the contract.

(6) The governing body and the advisory panel, if applicable, notes the disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for that purpose without counting the vote of the individual.

(b) (1) For purposes of this section, ''commission'' means a nonprofit corporation established in Kern County to operate the local health plan and other health care programs owned by, or operated in, Kern County.

(2) The commission shall be considered a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(c) For purposes of this section, ''governing body'' means the board of directors of the nonprofit corporation established in Kern County, and ''board of supervisors'' means the Kern County Board of Supervisors.

(d) The commission may enter into agreements under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

SEC. 10.5. Section 14043.46 is added to the Welfare and Institutions Code, to read:

14043.46. (a) Notwithstanding any other provision of law, on the effective date of the act adding this section, the department may implement a one-year moratorium on the certification and enrollment into the Medi-Cal program of new adult day health care centers on a statewide basis or within a geographic area.

(b) The moratorium shall not apply to the following:

(1) Programs of All-Inclusive Care for the Elderly (PACE) established pursuant to Chapter 8.75 (commencing with Section 14590).

(2) An organization that currently holds a designation as a federally qualified health center as defined in Section 1396d(*l*)(2) of Title 42 of the United States Code.

(3) An organization that currently holds a designation as a federally qualified rural health clinic as defined in Section 1396d(*l*)(1) of Title 42 of the United States Code.

(4) An applicant with the physical location of the center in an unserved area, which is defined as a county having no licensed and certified adult day health care center within its geographic boundary.

(c) The moratorium shall not prohibit the department from approving a change of ownership, relocation, or increase in capacity for an adult day health care center if the following conditions are met:

(1) For an application to change ownership, the adult day health care center meets all of the following conditions:

(A) Has been licensed and certified prior to the effective date of this section.

(B) Has a license in good standing.

(C) Has a record of substantial compliance with certification laws and regulations.

(D) Has met all requirements for the change application.

(2) For an application to relocate an existing facility, the relocation center must meet all of the conditions of paragraph (1) and both of the following conditions:

(A) Must be located in the same county as the existing licensed center.

(B) Must be licensed for the same capacity as the existing licensed center, unless the relocation center is located in an underserved area, which is defined as a county having 2 percent or fewer Medi-Cal beneficiaries over the age of 65 years using adult day health care services, based on 2002 calendar year Medi-Cal utilization data.

(3) For an application to increase the capacity of an existing facility, the center must meet all of the conditions of paragraph (1) and must be located in an underserved area, which is defined as a county having 2 percent or fewer Medi-Cal beneficiaries over the age of 65 years using adult day health care services, based on 2002 calendar year Medi-Cal utilization data.

(d) Following the first 180 days of the moratorium period, the department may make exceptions to the moratorium for new adult day health care centers that are located in underserved areas if the center's application was on file with the department on or before the effective date of the act adding this section. In order to apply for this exemption, an applicant or licensee must meet all of the following criteria:

(1) The applicant has control of a facility, either by ownership or lease agreement, that will house the adult day health care center, has provided to the department all necessary documents and fees, and has completed and submitted all required fingerprinting forms to the department.

(2) The physical location of the applicant's or licensee's adult day health care center is in an underserved area, which is defined as a county having 2 percent or fewer Medi-Cal beneficiaries over the age of 65 years using adult day health care services, based on 2002 calendar year Medi-Cal utilization data.

(e) During the period of the moratorium, a licensee or applicant that meets the criteria for an exemption as defined in subdivision (d) may submit a written request for an exemption to the director.

(f) If the director determines that a new adult day health care licensee or applicant meets the exemption criteria, the director may certify the

licensee or applicant, once licensed, for participation in the Medi-Cal program.

(g) The director may extend this moratorium, if necessary, to coincide with the implementation date of the adult day health care waiver.

(h) The authority granted in this section shall not be interpreted as a limitation on the authority granted to the department in any other section.

SEC. 10.7. 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, which may include the department's discovery or determination that a claim was submitted for reimbursement under the Medi-Cal program for a nerve conduction test, electromyography, or procedures, tests, examinations, or other medical services that the department has specified requires a certain residency or board certification, but the records did not contain, or the person or entity submitting the claim for reimbursement did not have, the certificate or diploma required by Section 14170.11.

(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. 11. Section 14085.7 of the Welfare and Institutions Code is amended to read:

14085.7. (a) The Medi-Cal Medical Education Supplemental Payment Fund is hereby created in the State Treasury. Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in this section. Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) All public moneys transferred by public agencies to the department for deposit into the fund, as permitted under Section 433.51 of Title 42 of the Code of Federal Regulations or any other applicable federal medicaid laws.

(2) All private moneys donated by private individuals or entities to the department for deposit in the fund as permitted under applicable federal medicaid laws.

(3) Any amounts appropriated to the fund by the Legislature.

(4) Any interest that accrues on amounts in the fund.

(b) Any public agency transferring moneys to the fund may, for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public moneys or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(c) The department shall have the discretion to accept or not accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal matching funds to the full extent permitted by law. The department shall accept only those funds that are certified by the transferring or donating entity as qualifying for federal financial participation under the terms of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable, and may return any funds transferred or donated in error.

(d) Moneys in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures for purposes of payments under subdivision (e). Distributions from the fund shall be supplemental to any other amounts that hospitals receive under the contracting program.

(e) For purposes of recognizing medical education costs incurred for services rendered to Medi-Cal beneficiaries, payments from this fund shall be negotiated between the California Medical Assistance Commission and hospitals contracting under this article that meet the definition of university teaching hospitals or major (nonuniversity) teaching hospitals as set forth on page 51 and as listed on page 57 of the department's report dated May 1991, entitled ''Hospital Peer Grouping.'' Payments from the fund shall be used solely for the purposes identified in the contract between the hospital and the state.

(f) The state shall be held harmless from any federal disallowance resulting from this section. A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section with respect to that hospital. The state may recoup any federal disallowance from the hospital.

SEC. 12. Section 14085.8 of the Welfare and Institutions Code is amended to read:

14085.8. (a) The Large Teaching Emphasis Hospital and Children's Hospital Medi-Cal Medical Education Supplemental Payment Fund is hereby created in the State Treasury.

(b) Notwithstanding Section 13340 of the Government Code, the fund shall be continuously appropriated to, and under the administrative control of, the department for the purposes specified in this section.

(c) Except as otherwise limited by this section, the fund shall consist of all of the following:

(1) All public moneys transferred by public agencies to the department for deposit into the fund, as permitted under Section 433.51 of Title 42 of the Code of Federal Regulations or any other applicable federal medicaid laws.

(2) All private moneys donated by private individuals or entities to the department for deposit in the fund as permitted under applicable federal medicaid laws.

(3) Any amounts appropriated to the fund by the Legislature.

(4) Any interest that accrues on amounts in the fund.

(d) Any public agency transferring moneys to the fund may, for that purpose, utilize any revenues, grants, or allocations received from the state for health care programs or purposes, unless otherwise prohibited by law. A public agency may also utilize its general funds or any other public moneys or revenues for purposes of transfers to the fund, unless otherwise prohibited by law.

(e) The department may accept or not accept moneys offered to the department for deposit in the fund. If the department accepts moneys pursuant to this section, the department shall obtain federal matching funds to the full extent permitted by law. The department shall accept only those funds that are certified by the transferring or donating entity as qualifying for federal financial participation under the terms of the Medicaid Voluntary Contribution and Provider-Specific Tax Amendments of 1991 (P.L. 102-234) or Section 433.51 of Title 42 of the Code of Federal Regulations, as applicable, and may return any funds transferred or donated in error.

(f) Moneys in the fund shall be used as the source for the nonfederal share of payments to hospitals under this section. Moneys shall be allocated from the fund by the department and matched by federal funds in accordance with customary Medi-Cal accounting procedures for purposes of payments under subdivision (g). Distributions from the fund shall be supplemental to any other amounts that hospitals receive under the contracting program.

(g) (1) For purposes of recognizing medical education costs incurred for services rendered to Medi-Cal beneficiaries, contracts for payments

from the fund may, at the discretion of the California Medical Assistance Commission, be negotiated between the commission and hospitals contracting under this article that are defined as either of the following:

(A) A large teaching emphasis hospital, as set forth on page 51 and listed on page 57 of the department's report dated May 1991, entitled ''Hospital Peer Grouping,'' and meets the definition of eligible hospital as defined in paragraph (3) of subdivision (a) of Section 14105.98.

(B) A children's hospital pursuant to Section 10727 and meets the definition of eligible hospital as defined in paragraph (3) of subdivision (a) of Section 14105.98.

(2) Payments from the fund shall be used solely for the purposes identified in the contract between the hospital and the state.

(h) The state shall be held harmless from any federal disallowance resulting from this section. A hospital receiving supplemental reimbursement pursuant to this section shall be liable for any reduced federal financial participation resulting from the implementation of this section with respect to that hospital. The state may recoup any federal disallowance from the hospital.

SEC. 12.1. Section 14087.31 of the Welfare and Institutions Code is amended to read:

14087.31. (a) It is necessary that a special commission be established in the Counties of Tulare and San Joaquin in order to meet the problems of delivery of publicly assisted medical care in the county and to demonstrate ways of promoting quality care and cost efficiency. Because there is no general law under which such a commission could be formed, the adoption of a special act and the formation of a special commission is required.

(b) (1) The Board of Supervisors of the County of Tulare and the County of San Joaquin may, for each respective county, by ordinance, establish a commission to negotiate and enter into contracts authorized by Section 14087.3, and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county contracting with the department under this article shall be vested in the county commission.

(2) Health plans operated by the commission may also include, but are not limited to, individuals covered under Title XVIII of the Social Security Act (Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code), individuals and groups entitled to coverage under other publicly supported programs, individuals and groups employed by public agencies or private businesses, and uninsured or indigent persons.

(c) The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, the

manner of appointment, selection, or removal of commissioners, and how long they shall serve, and any other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. Members of the commission shall be appointed by the county board of supervisors to represent the interests of the public, county, beneficiaries, physicians, hospitals, other health care providers, or other health care organizations. The commission so established shall be considered an entity separate from the county and shall file a statement required by Section 53051 of the Government Code. The commission shall have the power to acquire, possess, and dispose of real or personal property, as may be necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, to sue or be sued, and to enter into agreements under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code. Any obligations of a commission, statutory, contractual or otherwise, shall be obligations solely of the commission and shall not be the obligations of the county or of the state.

(d) Upon creation, the commission may borrow from the county, and the county may lend the commission, funds or issue revenue anticipation notes to obtain those funds necessary to commence operations. Prior to commencement of operations, the commission shall be licensed pursuant to the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(e) In the event a commission may no longer function for the purposes for which it is established, at the time as the commission's then existing obligations have been satisfied or the commission's assets have been exhausted, the board of supervisors may, by ordinance, terminate the commission.

(f) Prior to the termination of the commission, the board of supervisors shall notify the department of its intent to terminate the commission. The department shall conduct an audit of the commission's records within 30 days of the notification to determine the liabilities and assets of the commission. The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the commission and to pay the liabilities of the commission to the extent of the commission's assets, and present the plan to the department within 30 days upon receipt of these findings.

(g) Any assets of the commission shall be disposed of pursuant to provisions contained in the contract entered into between the state and the commission pursuant to Section 14087.

(h) (1) It is the intent of the Legislature that if a commission is formed pursuant to this section, the county shall, with respect to its

medical facilities and programs, occupy no greater or lesser status than any other health care provider with similar cost structure and patient population including, but not limited to, considerations of indigent care burden, capital requirements, graduate medical education, and disproportionate share status, in negotiating with the commission for contracts to provide health care services.

(2) Contracts between the department and the commission shall be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(3) Nothing in this subdivision shall be construed to interfere with or limit the commission from giving preference in negotiating to disproportionate share hospitals or other providers of health care to medically indigent or uninsured persons.

(i) Upon termination of the commission by the board, the county shall manage any remaining assets of the commission until superseded by a department approved plan. Any liabilities of the commission shall not become obligations of the county upon either the termination of the commission or the liquidation or disposition of the commission's remaining assets.

(j) (1) The commission shall be considered a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(2) The commission, its members, and employees, are protected by the immunities applicable to public entities and public employees governed by Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the commission.

(k) Notwithstanding any other provision of law, a member of the commission shall not be deemed to be interested in a contract entered into by the commission within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all of the following apply:

(1) The member was appointed to represent the interest of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(2) The contract authorizes the member or the organization the member represents to provide services to Medi-Cal beneficiaries under the commission's programs.

(3) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(4) The member does not influence or attempt to influence the commission or another member of the commission to enter into the contract in which the member is interested.

(5) The member discloses the interest to the commission and abstains from voting on the contract.

(6) The commission notes the member's disclosure and abstention in its official records and authorized the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(*l*) All claims for money or damages against the commission shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that expressly apply to the commission.

(m) Notwithstanding any other provision of law, except as otherwise provided in this section, a county shall not be liable for any act or omission of the commission.

(n) For the purposes of this section, ''commission'' means an entity separate from the county that meets the requirements of state and federal law and the quality, cost, and access criteria established by the department.

(o) The transfer of responsibility for health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000.

(p) Notwithstanding any other provision of law, the commission may meet in closed session to consider and take action on matters pertaining to contracts and contract negotiations by commission staff with providers of health care services concerning all matters related to rates of payment.

(q) Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code and Article 2 (commencing with Section 54340) of Chapter 6 of Division 2 of Title 5 of the Government Code, or any other provision of law, any ''peer review body,'' as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the commission authorized by this section, may, at its discretion and without notice to the public, meet in closed session, so long as the purpose of the meeting is the peer review body's discharge of its responsibility to evaluate and improve the quality of care rendered by health facilities of health practitioners, pursuant to the powers granted the commission. The peer review body and its members shall receive to the fullest extent all immunities, privileges, and protections available to these peer review bodies, their individual members, and persons or entities assisting in the peer review process, including, but not limited to, those afforded by Section 1370 of the Health and Safety Code.

(r) Notwithstanding any other provision of law, both the county and the commission shall be eligible to receive funding under subdivision (p)

of Section 14163, and the commission shall be considered for all purposes to satisfy the requirements of subdivision (p) of Section 14163.

(s) The commission shall be deemed to be a public agency that is a unit of local government for purposes of all grant programs and other funding and loan guarantee programs.

(t) Notwithstanding any other provision of law, those records of the commission and of the county that reveal the rates of payment for health care services or the commission's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, shall not be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(u) Notwithstanding the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), Article 3 (commencing with Section 11200) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code, Chapter 9 (commencing with Section 54960) of Part 1 of Division 2 of Title 5 of the Government Code, or any other provision of state or local law requiring disclosure of public records, those records of the commission and the county that reveal the proceedings of a peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the commission authorized by this section, shall not be required to be disclosed. The records and proceedings of the peer review body and its members shall receive to the fullest extent, all immunities, privileges, and protections available to these records and proceedings, including, but not limited to, those afforded by Section 1157 of the Evidence Code.

(v) (1) Provisions of the Evidence Code, the Government Code, including the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies shall apply to the peer review activities of the commission. Peer review proceedings shall constitute an official proceeding authorized by law within the meaning of Section 47 of the Civil Code, and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the commission. If the commission is required by law or contractual obligation to submit to the state or federal government peer review information or information relevant to the credentialing of a

participating provider, that submission shall not constitute a waiver of confidentiality. All laws pertaining to the confidentiality of peer review activities shall be construed together as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other provision of law, Section 1461 of the Health and Safety Code shall apply to hearings on the reports of hospital medical audit or quality assurance committees as they relate to network providers or applicants.

(w) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), including, but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the commission is required to prepare, produce, or submit pursuant to this section.

(x) (1) The commission may use a computerized management information system in connection with the administration of its health delivery system, including the administration of the state-mandated two-plan Medi-Cal managed care model.

(2) Information maintained in the management information system that pertains to persons who are Medi-Cal applicants or recipients shall be confidential pursuant to Section 14100.2, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program, including, but not limited to, those set forth in subdivision (c) of Section 14100.2. This safeguarded information includes, but is not limited to, the names and addresses of recipients, the medical services provided, the social and economic conditions or circumstances of the recipients, an evaluation by the commission of personal information, and medical data, including the diagnosis and past history of disease or disability.

(3) Information maintained in the management information system that pertains to peer review-related activities shall be confidential and subject to the full protections of the law with respect to the confidentiality of activities related to peer review generally.

(y) (1) The records of the commission, whether paper records, records maintained in the management information system, or records in any other form, that relate to rates of payment, including records relating to rates of payment determination, allocation or distribution methodologies, formulas or calculations, and records of the health authority that relate to contract negotiations with providers of health care for alternative rates, shall not be subject to disclosure pursuant to the

California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(2) The transmission of the records of the commission, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information, once transmitted to the county board of supervisors, shall be subject to this same exemption. The information, if compelled pursuant to an order of a court of competent jurisdiction or administrative body in a manner permitted by law, shall be limited to in camera review, and shall not be shared with the parties to the proceeding.

(3) The submission, to the Department of Managed Health Care, of information described in this section for the purpose of obtaining licensure under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, or to the State Department of Health Services, shall not constitute a waiver of exemption from disclosure.

(z) (1) (A) Notwithstanding the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the commission may meet in closed session for the purpose of discussion of, or taking action on matters involving, commission trade secrets.

(B) The requirement that the commission make a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description of the action taken and the vote so as to prevent the disclosure of a trade secret.

(C) For purposes of this subdivision, ''commission trade secret'' means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(i) The secrecy of the information is necessary for the commission to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(ii) Premature disclosure of the trade secret would create a substantial probability of depriving the commission of a substantial economic benefit or opportunity.

(2) Those records of the commission that reveal the commission's trade secrets are exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. This exemption shall apply for a period of two years after the service, program, marketing strategy, business plan, technology, benefit, or product that is the subject of the trade secret is formally adopted by the governing body of the commission, provided that the service, program, marketing strategy, business plan, technology, benefit, or product continues to be a trade

secret. The commission may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to paragraph (1) that are provided to persons who have made the timely or standing request.

(3) Nothing in this section shall be construed as preventing the commission from meeting in closed session as otherwise provided by law.

SEC. 12.2. Section 14087.35 of the Welfare and Institutions Code is amended to read:

14087.35. (a) Because of the unique circumstances that exist in the County of Alameda, it is necessary that the Board of Supervisors of the County of Alameda be given authority to create a health authority separate and apart from the County of Alameda as a means of establishing the local initiative component of the state-mandated two-plan managed care model for the delivery of medical care and services to the Medi-Cal populations. It is further necessary to enable the board of supervisors to expand publicly assisted medical and health care delivery by the newly created health authority to other populations should the board of supervisors elect to do so. Thus, the adoption of a special act is required.

(b) The Board of Supervisors of the County of Alameda may, by ordinance, establish a health authority separate and apart from the County of Alameda, whose governing board shall reflect the diversity of local stakeholders such as provider groups, beneficiary groups, and officials of government, and that is appointed by the board of supervisors. Notwithstanding any other provision of this chapter, the governing board may include, but need not be limited to, the following: a member of the board of supervisors, individuals that represent and further the interests of the perspectives of Medi-Cal beneficiaries, and individuals that represent and further the interests of the perspectives of Medi-Cal provider physicians and other health practitioners, hospitals, and nonprofit community health centers. Other perspectives may be represented at the discretion of the board of supervisors. The enabling ordinance shall more specifically set forth the membership of the health authority governing board, the qualifications for individual members, the manner of appointment, selection, or removal of governing board members, their terms of office, and all other matters that the board of supervisors deems necessary or convenient for the conduct of the health authority's activities.

(c) The governing board of the health authority and the appropriate state departments, to the extent permitted by federal law, may negotiate and enter into contracts to provide or arrange for health care services for any or all persons who are eligible to receive benefits under the Medi-Cal program and for other targeted populations. The contracts may be on an

exclusive or nonexclusive basis, and shall include payment provisions on any basis negotiated between the state and health authority. Prior to the commencement of operations, the health authority shall be licensed as a health care service plan pursuant to the Knox-Keene Health Care Services Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code).

(d) The board of supervisors may transfer responsibility for administration of county-provided health care services to the health authority for the purpose of service of populations including uninsured and indigent persons subject to the provisions of any ordinances or resolutions passed by the board of supervisors. The transfer of administrative responsibility for those health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000. In addition, the services and programs of the health authority may include, but are not limited to, individuals covered under Title XVIII of the Social Security Act, contained in Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, and individuals and groups employed by public agencies and private businesses.

(e) As a legal entity separate and apart from the County of Alameda, the health authority shall file the statement required by Section 53051 of the Government Code. The health authority shall have the power to acquire, possess, and dispose of real or personal property as may be necessary for the performance of its functions, to sue or be sued, to employ personnel and contract for services required to meet its obligations, and to enter into agreements under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(f) (1) The health authority shall be deemed to be a legal entity separate and apart from the County of Alameda, and shall not be considered to be an agency, division, department, or instrumentality of the County of Alameda.

(2) The health authority shall not be governed by, nor be subject to, the Charter of the County of Alameda and shall not be subject to county policies or operational rules, including, but not limited to, those relating to personnel and procurement.

(g) The health authority shall be considered a public entity, and employees of the health authority shall be considered public employees, for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, relating to claims and actions against public entities and public employees. Members of the governing board of the health authority shall not be vicariously liable for injuries caused by the act or omission of the health authority or advisory body to the extent that protection applies to members of governing boards of local public entities generally under Section 820.9 of the Government Code.

(h) Upon the enactment of the ordinance, all rights, powers, duties, privileges, and immunities vested in the County of Alameda with respect to the subject matter of this section shall be vested in the health authority. Any obligation of the health authority, statutory, contractual, or otherwise, shall be the obligation solely of the health authority and shall not be the obligation of the County of Alameda or the state.

(i) The health authority shall not be a ''person'' subject to suit under the Cartwright Act, Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code.

(j) The health authority created pursuant to this section may borrow from the county and the county may lend the health authority funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(k) The health authority or the county, or both, may engage in marketing, advertising, and promotion of the medical and health care services made available to the target populations by the health authority.

(*l*) Provisions for the termination of the health authority's activities with respect to the delivery of services to Medi-Cal populations shall be contained in the appropriate contracts executed by and between the health authority and the appropriate state departments.

(m) If the board of supervisors expands publicly assisted medical and health care delivery by the health authority to other populations, and the board of supervisors subsequently determines that the health authority may no longer function for the purpose of the expanded delivery, at the time as the health authority's existing obligations with respect thereto have been satisfied, the board of supervisors may, by ordinance, terminate the expanded delivery activities of the health authority.

(n) All assets of the health authority that are related to Medi-Cal services shall be disposed of pursuant to the Medi-Cal related contract entered into between the state and the health authority.

(o) All liabilities or obligations of the health authority with respect to its activities pursuant to the state-mandated two-plan managed care model for the delivery of medical care and services to the Medi-Cal population shall be the liabilities or obligations of the health authority, and shall not become the liabilities or obligations of the county upon the termination of the health authority or at any other time. Any liabilities or obligations of the health authority with respect to the liquidation or disposition of the health authority's assets upon termination of the health authority shall not become the liabilities or obligations of the county, except that the county shall manage any remaining Medi-Cal related assets of the health authority until superseded by a plan approved by the department.

(p) The Legislature finds and declares that Section 14105 provides that the Director of Health Services prescribe the policies for the

administration of Medi-Cal managed care contracts. The state-mandated two-plan managed care model distributed by the director sets forth that policy, expressly providing that local stakeholders, including government officials, providers, and community-based organizations, are afforded maximum flexibility and control in designing a delivery system that reflects the needs and priorities of the community that it serves. The mandated model requires that the governing board of the local initiative reflect an effort to include representation of the perspectives of provider and beneficiary groups. To effectuate this policy, all of the following shall apply:

(1) Notwithstanding any provision of law to the contrary, a member of the governing board of the health authority shall be deemed not to be interested in a contract entered into by the health authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all the following apply:

(A) The member was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(B) The contract authorizes the member or the organization the member represents to provide services to beneficiaries or administrative services under the health authority's programs.

(C) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(D) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(E) The member discloses the interest to the health authority and abstains from voting on the contract.

(F) The health authority notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(2) Notwithstanding Article 4.7 (commencing with Section 1125) of Chapter 1 of Division 4 of Title 1 of the Government Code related to incompatible activities, no member of the governing board, no officer, and no member of the alliance staff shall be considered to be engaged in activities inconsistent and incompatible with his or her duties as a governing board member, officer, or staff person solely as a result of employment or affiliation with the county, private hospital, clinic, pharmacy, other provider group, employee organization, or citizen's group.

(q) (1) The health authority may use a computerized management information system in connection with the administration of its health

delivery system, including the administration of the state-mandated two-plan Medi-Cal managed care model.

(2) Information maintained in the management information system that pertains to persons who are Medi-Cal applicants or recipients shall be confidential pursuant to Section 14100.2, and shall not be open to examination other than for purposes directly connected with the administration of the Medi-Cal program, including, but not limited to, those set forth in subdivision (c) of Section 14100.2. This safeguarded information includes, but is not limited to, names and addresses, medical services provided, social and economic conditions or circumstances, health authority evaluation of personal information, and medical data, including diagnosis and past history of disease or disability.

(3) Information maintained in the management information system that pertains to peer review-related activities shall be confidential and subject to the full protections of the law with respect to the confidentiality of activities related to peer review generally.

(r) The records of the health authority, whether paper records, records maintained in the management information system, or records in any other form, that relate to rates of payment, including records relating to rates of payment determination, allocation or distribution methodologies, formulas or calculations, and records of the health authority that relate to contract negotiations with providers of health care for alternative rates, shall not be subject to disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code). The transmission of the records, or the information contained therein in an alternative form, to the board of supervisors shall not constitute a waiver of exemption from disclosure, and the records and information once transmitted to the board of supervisors shall be subject to this same exemption.

(s) (1) (A) Notwithstanding the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the governing board of the health authority may meet in closed session for the purpose of discussion of, or taking action on matters involving, health authority trade secrets.

(B) The requirement that the authority make a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description of the action taken and the vote so as to prevent the disclosure of a trade secret.

(C) For purposes of this subdivision, ''health authority trade secret'' means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(i) The secrecy of the information is necessary for the health authority to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(ii) Premature disclosure of the trade secret would create a substantial probability of depriving the health authority of a substantial economic benefit or opportunity.

(2) Those records of the health authority that reveal the health authority's trade secrets are exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. This exemption shall apply for a period of two years after the service, program, marketing strategy, business plan, technology, benefit, or product that is the subject of the trade secret is formally adopted by the governing body of the health authority, provided that the service, program, marketing strategy, business plan, technology, benefit, or product continues to be a trade secret. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to paragraph (1) that are provided to persons who have made the timely or standing request.

(3) Nothing in this section shall be construed as preventing the governing board from meeting in closed session as otherwise provided by law.

(t) Open sessions of the health authority shall constitute official proceedings authorized by law within the meaning of Section 47 of the Civil Code, and those privileges set forth in that section with respect to official proceedings shall apply to open sessions of the health authority.

(u) The health authority shall be considered a public agency for purposes of eligibility with respect to grants and other funding and loan guarantee programs. Contributions to the health authority shall be tax deductible to the extent permitted by state and federal law.

(v) Contracts by and between the health authority and the state, and contracts by and between the health authority and providers of health care, goods, or services may be let on a nonbid basis, and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(w) (1) Provisions of the Evidence Code, the Government Code, including the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), the Civil Code, the Business and Professions Code, and other applicable law pertaining to the confidentiality of peer review activities of peer review bodies shall apply to the peer review activities of the health authority. Peer review proceedings shall constitute an official proceeding authorized by law within the meaning of Section 47 of the

Civil Code, and those privileges set forth in that section with respect to official proceedings shall apply to peer review proceedings of the health authority. If the health authority is required by law or contractual obligation to submit to the state or federal government peer review information or information relevant to the credentialing of a participating provider, that submission shall not constitute a waiver of confidentiality. The laws pertaining to the confidentiality of peer review activities shall be together construed as extending, to the extent permitted by law, the maximum degree of protection of confidentiality.

(2) Notwithstanding any other provision of law, Section 1461 of the Health and Safety Code shall apply to hearings on the reports of hospital medical audit or quality assurance committees as they relate to network providers or applicants.

(x) The health authority shall carry general liability insurance to the extent sufficient to cover its activities.

(y) The establishment of a health authority under Article 2.8 (commencing with Section 14087.5) shall be valid as if established pursuant to this section and this section shall apply to that health authority.

SEC. 12.3. Section 14087.36 of the Welfare and Institutions Code is amended to read:

14087.36. (a) The following definitions shall apply for purposes of this section:

(1) ''County'' means the City and County of San Francisco.

(2) ''Board'' means the Board of Supervisors of the City and County of San Francisco.

(3) ''Department'' means the State Department of Health Services.

(4) ''Governing body'' means the governing body of the health authority.

(5) ''Health authority'' means the separate public agency established by the board of supervisors to operate a health care system in the county and to engage in the other activities authorized by this section.

(b) The Legislature finds and declares that it is necessary that a health authority be established in the county to arrange for the provision of health care services in order to meet the problems of the delivery of publicly assisted medical care in the county, to enter into a contract with the department under Article 2.97 (commencing with Section 14093), or to contract with a health care service plan on terms and conditions acceptable to the department, and to demonstrate ways of promoting quality care and cost efficiency.

(c) The county may, by resolution or ordinance, establish a health authority to act as and be the local initiative component of the Medi-Cal state plan pursuant to regulations adopted by the department. If the board elects to establish a health authority, all rights, powers, duties,

privileges, and immunities vested in a county under Article 2.8 (commencing with Section 14087.5) and Article 2.97 (commencing with Section 14093) shall be vested in the health authority. The health authority shall have all power necessary and appropriate to operate programs involving health care services, including, but not limited to, the power to acquire, possess, and dispose of real or personal property, to employ personnel and contract for services required to meet its obligations, to sue or be sued, to take all actions and engage in all public and private business activities, subject to any applicable licensure, as permitted a health care service plan pursuant to Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, and to enter into agreements under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(d) (1) (A) The health authority shall be considered a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, separate and distinct from the county, and shall file the statement required by Section 53051 of the Government Code. The health authority shall have primary responsibility to provide the defense and indemnification required under Division 3.6 (commencing with Section 810) of Title 1 of the Government Code for employees of the health authority who are employees of the county. The health authority shall provide insurance under terms and conditions required by the county in order to satisfy its obligations under this section.

(B) For purposes of this paragraph, ''employee'' shall have the same meaning as set forth in Section 810.2 of the Government Code.

(2) The health authority shall not be considered to be an agency, division, department, or instrumentality of the county and shall not be subject to the personnel, procurement, or other operational rules of the county.

(3) Notwithstanding any other provision of law, any obligations of the health authority, statutory, contractual, or otherwise, shall be the obligations solely of the health authority and shall not be the obligations of the county, unless expressly provided for in a contract between the authority and the county, nor of the state.

(4) Except as agreed to by contract with the county, no liability of the health authority shall become an obligation of the county upon either termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

(e) (1) To the full extent permitted by federal law, the department and the health authority may enter into contracts to provide or arrange for health care services for any or all persons who are eligible to receive benefits under the Medi-Cal program. The contracts may be on an exclusive or nonexclusive basis, and shall include payment provisions on any basis negotiated between the department and the health authority.

The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, individuals employed by public agencies and private businesses, and uninsured or indigent individuals.

(2) Notwithstanding paragraph (1), or subdivision (f), the health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975 under Chapter 2.2 (commencing with Section 1340) of Division 2 of the Health and Safety Code, including tangible net equity requirements applicable to a licensed health care service plan. This limitation shall not preclude the health authority from enrolling persons pursuant to the county's obligations under Section 17000, or from enrolling county employees.

(f) The board of supervisors may transfer responsibility for administration of county-provided health care services to the health authority for the purpose of service of populations including uninsured and indigent persons, subject to the provisions of any ordinances or resolutions passed by the county board of supervisors. The transfer of administrative responsibility for those health care services shall not relieve the county of its responsibility for indigent care pursuant to Section 17000. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, and individuals employed by public agencies and private businesses.

(g) Upon creation, the health authority may borrow from the county and the county may lend the authority funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations or perform the activities of the health authority. Notwithstanding any other provision of law, both the county and the health authority shall be eligible to receive funding under subdivision (p) of Section 14163.

(h) The county may terminate the health authority, but only by an ordinance approved by a two-thirds affirmative vote of the full board.

(i) Prior to the termination of the health authority, the county shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of notification to determine the liabilities and assets of the health authority. The department shall report its findings to the county and to

the Department of Managed Health Care within 10 days of completion of the audit. The county shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department and the Department of Managed Health Care within 30 days upon receipt of these findings.

(j) Any assets of the health authority derived from the contract entered into between the state and the authority pursuant to Article 2.97 (commencing with Section 14093), after payment of the liabilities of the health authority, shall be disposed of pursuant to the contract.

(k) (1) The governing body shall consist of 18 voting members, 14 of whom shall be appointed by resolution or ordinance of the board as follows:

(A) One member shall be a member of the board or any other person designated by the board.

(B) One member shall be a person who is employed in the senior management of a hospital not operated by the county or the University of California and who is nominated by the San Francisco Section of the Westbay Hospital Conference or any successor organization, or if there is no successor organization, a person who shall be nominated by the Hospital Council of Northern and Central California.

(C) Two members, one of whom shall be a person employed in the senior management of San Francisco General Hospital and one of whom shall be a person employed in the senior management of St. Luke's Hospital (San Francisco). If San Francisco General Hospital or St. Luke's Hospital, at the end of the term of the person appointed from its senior management, is not designated as a disproportionate share hospital, and if the governing body, after providing an opportunity for comment by the Westbay Hospital Conference, or any successor organization, determines that the hospital no longer serves an equivalent patient population, the governing body may, by a two-thirds vote of the full governing body, select an alternative hospital to nominate a person employed in its senior management to serve on the governing body. Alternatively, the governing body may approve a reduction in the number of positions on the governing body as set forth in subdivision (p).

(D) Two members shall be employees in the senior management of either private nonprofit community clinics or a community clinic consortium, nominated by the San Francisco Community Clinic Consortium, or any successor organization.

(E) Two members shall be physicians, nominated by the San Francisco Medical Society, or any successor organization.

(F) One member shall be nominated by the San Francisco Labor Council, or any successor organization.

(G) Two members shall be persons nominated by the beneficiary committee of the health authority, at least one of whom shall, at the time of appointment and during the person's term, be a Medi-Cal beneficiary.

(H) Two members shall be persons knowledgeable in matters relating to either traditional safety net providers, health care organizations, the Medi-Cal program, or the activities of the health authority, nominated by the program committee of the health authority.

(I) One member shall be a person nominated by the San Francisco Pharmacy Leadership Group, or any successor organization.

(2) One member, selected to fulfill the appointments specified in subparagraph (A), (G), or (H) shall, in addition to representing his or her specified organization or employer, represent the discipline of nursing, and shall possess or be qualified to possess a registered nursing license.

(3) The initial members appointed by the board under the subdivision shall be, to the extent those individuals meet the qualifications set forth in this subdivision and are willing to serve, those persons who are members of the steering committee created by the county to develop the local initiative component of the Medi-Cal state plan in San Francisco. Following the initial staggering of terms, each of those members shall be appointed to a term of three years, except the member appointed pursuant to subparagraph (A) of paragraph (1), who shall serve at the pleasure of the board. At the first meeting of the governing body, the members appointed pursuant to this subdivision shall draw lots to determine seven members whose initial terms shall be for two years. Each member shall remain in office at the conclusion of that member's term until a successor member has been nominated and appointed.

(*l*) In addition to the requirements of subdivision (k), one member of the governing body shall be appointed by the Mayor of the City of San Francisco to serve at the pleasure of the mayor, one member shall be the county's director of public health or designee, who shall serve at the pleasure of that director, one member shall be the Chancellor of the University of California at San Francisco or his or her designee, who shall serve at the pleasure of the chancellor, and one member shall be the county director of mental health or his or her designee, who shall serve at the pleasure of that director.

(m) There shall be one nonvoting member of the governing body who shall be appointed by, and serve at the pleasure of, the health commission of the county.

(n) Each person appointed to the governing body shall, throughout the member's term, either be a resident of the county or be employed within the geographic boundaries of the county.

(o) (1) The composition of the governing body and nomination process for appointment of its members shall be subject to alteration upon a two-thirds vote of the full membership of the governing body.

This action shall be concurred in by a resolution or ordinance of the county.

(2) Notwithstanding paragraph (1), no alteration described in that paragraph shall cause the removal of a member prior to the expiration of that member's term.

(p) A majority of the members of the governing body shall constitute a quorum for the transaction of business, and all official acts of the governing body shall require the affirmative vote of a majority of the members present and voting. However, no official shall be approved with less than the affirmative vote of six members of the governing body, unless the number of members prohibited from voting because of conflicts of interest precludes adequate participation in the vote. The governing body may, by a two-thirds vote adopt, amend, or repeal rules and procedures for the governing body. Those rules and procedures may require that certain decisions be made by a vote that is greater than a majority vote.

(q) For purposes of Section 87103 of the Government Code, members appointed pursuant to subparagraphs (B) to (E), inclusive, of paragraph (1) of subdivision (k) represent, and are appointed to represent, respectively, the hospitals, private nonprofit community clinics, and physicians that contract with the health authority, or the health care service plan with which the health authority contracts, to provide health care services to the enrollees of the health authority or the health care service plan. Members appointed pursuant to subparagraphs (F) and (G) of paragraph (1) of subdivision (k) represent, and are appointed to represent, respectively, the health care workers and enrollees served by the health authority or its contracted health care service plan, and traditional safety net and ancillary providers and other organizations concerned with the activities of the health authority.

(r) A member of the governing body may be removed from office by the board by resolution or ordinance, only upon the recommendation of the health authority, and for any of the following reasons:

(1) Failure to retain the qualifications for appointment specified in subdivisions (k) and (n).

(2) Death or a disability that substantially interferes with the member's ability to carry out the duties of office.

(3) Conviction of any felony or a crime involving corruption.

(4) Failure of the member to discharge legal obligations as a member of a public agency.

(5) Substantial failure to perform the duties of office, including, but not limited to, unreasonable absence from meetings. The failure to attend three meetings in a row of the governing body, or a majority of the meetings in the most recent calendar year, may be deemed to be unreasonable absence.

(s) Any vacancy on the governing body, however created, shall be filled for the unexpired term by the board by resolution or ordinance. Each vacancy shall be filled by an individual having the qualifications of his or her predecessor, nominated as set forth in subdivision (k).

(t) The chair of the authority shall be selected by, and serve at the pleasure of, the governing body.

(u) The health authority shall establish all of the following:

(1) A beneficiary committee to advise the health authority on issues of concern to the recipients of services.

(2) A program committee to advise the health authority on matters relating to traditional safety net providers, ancillary providers, and other organizations concerned with the activities of the health authority.

(3) Any other committees determined to be advisable by the health authority.

(v) (1) Notwithstanding any provision of state or local law, including, but not limited to, the county charter, a member of the health authority shall not be deemed to be interested in a contract entered into by the authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, or within the meaning of conflict-of-interest restrictions in the county charter, if all of the following apply:

(A) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(B) The member discloses the interest to the health authority and abstains from voting on the contract.

(C) The health authority notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(D) The member has an interest in or was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations.

(E) The contract authorizes the member or the organization the member has an interest in or represents to provide services to beneficiaries under the authority's program or administrative services to the authority.

(2) In addition, no person serving as a member of the governing body shall, by virtue of that membership, be deemed to be engaged in activities that are inconsistent, incompatible, or in conflict with their duties as an officer or employee of the county or the University of California, or as an officer or an employee of any private hospital, clinic, or other health care organization. The membership shall not be deemed to be in violation of Section 1126 of the Government Code.

(w) Notwithstanding any other provision of law, those records of the health authority and of the county that reveal the authority's rates of payment for health care services or the health authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, or the health authority's peer review proceedings shall not be required to be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(x) Notwithstanding any other provision of law, the health authority may meet in closed session to consider and take action on peer review proceedings and on matters pertaining to contracts and contract negotiations by the health authority's staff with providers of health care services concerning all matters relating to rates of payment. However, a decision as to whether to enter into, amend the services provisions of, or terminate, other than for reasons based upon peer review, a contract with a provider of health care services, shall be made in open session.

(y) (1) (A) Notwithstanding the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the governing board of the health authority may meet in closed session for the purpose of discussion of, or taking action on matters involving, health authority trade secrets.

(B) The requirement that the authority make a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description of the action taken and the vote so as to prevent the disclosure of a trade secret.

(C) For purposes of this subdivision, ''health authority trade secret'' means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(i) The secrecy of the information is necessary for the health authority to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(ii) Premature disclosure of the trade secret would create a substantial probability of depriving the health authority of a substantial economic benefit or opportunity.

(2) Those records of the health authority that reveal the health authority's trade secrets are exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. This exemption shall apply for a period of two years after the service, program, marketing

strategy, business plan, technology, benefit, or product that is the subject of the trade secret is formally adopted by the governing body of the health authority, provided that the service, program, marketing strategy, business plan, technology, benefit, or product continues to be a trade secret. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved in the closed session held pursuant to this subdivision that are provided to persons who have made the timely or standing request.

(z) The health authority shall be deemed to be a public agency for purposes of all grant programs and other funding and loan guarantee programs.

(aa) Contracts under this article between the State Department of Health Services and the health authority shall be on a nonbid basis and shall be exempt from Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code.

(ab) (1) The county controller or his or her designee, at intervals the county controller deems appropriate, shall conduct a review of the fiscal condition of the health authority, shall report the findings to the health authority and the board, and shall provide a copy of the findings to any public agency upon request.

(2) Upon the written request of the county controller, the health authority shall provide full access to the county controller all health authority records and documents as necessary to allow the county controller or designee to perform the activities authorized by this subdivision.

(ac) A Medi-Cal recipient receiving services through the health authority shall be deemed to be a subscriber or enrollee for purposes of Section 1379 of the Health and Safety Code.

SEC. 12.4. Section 14087.38 of the Welfare and Institutions Code is amended to read:

14087.38. (a) (1) In counties selected by the director with the concurrence of the county, a special county health authority may be established in order to meet the problems of delivery of publicly assisted medical care in each county, and to demonstrate ways of promoting quality care and cost efficiency. Nothing in this section shall be construed to preclude the department from expanding Medi-Cal managed care in ways other than those provided for in this section, including, but not limited to, the establishment of a public benefit corporation as set forth in Section 5110 of the Corporations Code.

(2) For purposes of this section, ''health authority'' means an entity separate from the county that meets the requirements of state and federal law and the quality, cost, and access criteria established by the department.

(b) The board of supervisors of a county described in subdivision (a) may, by ordinance, establish a health authority to negotiate and enter into contracts authorized by Section 14087.3, and to arrange for the provision of health care services provided pursuant to this chapter. If the board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county contracting with the department under this article shall be vested in the health authority. The health authority may also enter into contracts for the provision of health care services to individuals including, but not limited to, those covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, those entitled to coverage under other publicly supported programs, those employed by public agencies or private businesses, and uninsured or indigent individuals.

(c) The enabling ordinance shall specify the membership of the governing board of the health authority, the qualifications for individual members, the manner of appointment, selection, or removal of board members, and how long they shall serve, and any other matters the board of supervisors deems necessary or convenient for the conduct of the health authority's activities. Members of the governing board shall be appointed by the board of supervisors to represent the interests of the county, the general public, beneficiaries, physicians, hospitals, clinics, and other nonphysician health care providers. The health authority so established shall be considered an entity separate from the county and shall file a statement required by Section 53051 of the Government Code. The health authority shall have the power to acquire, possess, and dispose of real or personal property, as necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, to sue or be sued, and to enter into agreements under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code. Any obligations of a health authority, statutory, contractual, or otherwise, shall be obligations solely of the health authority and shall not be the obligations of the county or of the state.

(d) Upon creation, the health authority may borrow from the county, and the county may lend the health authority funds or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(e) Notwithstanding any other provision of law, both the county and the health authority shall be eligible to receive funding under subdivision (p) of Section 14163, and the health authority shall be considered to have satisfied the requirements of that subdivision.

(f) The health authority shall be deemed to be a public agency that is a unit of local government for purposes of all grant programs and other funding and loan guarantee programs.

(g) It is the intent of the Legislature that if a health authority is formed pursuant to this section, the county shall, with respect to its medical facilities and programs, occupy no greater or lesser status than any other health care provider in negotiating with the health authority for contracts to provide health care services. Nothing in this subdivision shall be construed to interfere with or limit the health authority in giving preference in negotiating to disproportionate share hospitals or other providers of health care to medically indigent or uninsured individuals.

(h) Notwithstanding any other provision of law, a member of the governing board of the health authority shall not be deemed to be interested in a contract entered into by the health authority within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all the following apply:

(1) The member was appointed to represent the interests of physicians, health care practitioners, hospitals, pharmacies, or other health care organizations, or beneficiaries.

(2) The contract authorizes the member or the organization the member represents to provide services to beneficiaries under the health authority's programs.

(3) The contract contains substantially the same terms and conditions as contracts entered into with other individuals or organizations that the member was appointed to represent.

(4) The member does not influence or attempt to influence the health authority or another member of the health authority to enter into the contract in which the member is interested.

(5) The member discloses the interest to the health authority and abstains from voting on the contract.

(6) The governing board notes the member's disclosure and abstention in its official records and authorizes the contract in good faith by a vote of its membership sufficient for the purpose without counting the vote of the interested member.

(i) All claims for money or damages against the health authority shall be governed by Part 3 (commencing with Section 900) and Part 4 (commencing with Section 940) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that expressly apply to the health authority.

(j) (1) The health authority shall be considered a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code.

(2) The health authority, members of its governing board, and its employees, are protected by the immunities applicable to public entities and public employees governed by Part 1 (commencing with Section 810) and Part 2 (commencing with Section 814) of Division 3.6 of Title

1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the health authority.

(k) Notwithstanding any other provision of law, except as otherwise provided in this section, a county shall not be liable for any act or omission of the health authority.

(*l*) The transfer of responsibility for health care services to the health authority shall not relieve the county of its responsibility for indigent care pursuant to Section 17000.

(m) Notwithstanding any other provision of law, the governing board of the health authority may meet in closed session to consider and take action on matters pertaining to contracts, and to contract negotiations by health authority staff with providers of health care services concerning all matters related to rates of payment.

(n) (1) (A) Notwithstanding the Ralph M. Brown Act (Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of the Government Code), the governing board of the health authority may meet in closed session for the purpose of discussion of, or taking action on matters involving, health authority trade secrets.

(B) The requirement that the authority make a public report of actions taken in closed session and the vote or abstention of every member present may be limited to a brief general description of the action taken and the vote so as to prevent the disclosure of a trade secret.

(C) For purposes of this section, ''health authority trade secret'' means a trade secret, as defined in subdivision (d) of Section 3426.1 of the Civil Code, that also meets both of the following criteria:

(i) The secrecy of the information is necessary for the health authority to initiate a new service, program, marketing strategy, business plan, or technology, or to add a benefit or product.

(ii) Premature disclosure of the trade secret would create a substantial probability of depriving the health authority of a substantial economic benefit or opportunity.

(2) Those records of the health authority that reveal the health authority's trade secrets are exempt from disclosure pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. This exemption shall apply for a period of two years after the service, program, marketing strategy, business plan, technology, benefit, or product that is the subject of the trade secret is formally adopted by the governing body of the health authority, provided that the service, program, marketing strategy, business plan, technology, benefit, or product continues to be a trade secret. The governing board may delete the portion or portions containing trade secrets from any documents that were finally approved

in closed session held pursuant to this subdivision that are provided to persons who have made the timely or standing request.

(o) Notwithstanding Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code, or any other provision of law, any peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the health authority authorized by this section, may, at its discretion and without notice to the public, meet in closed session, so long as the purpose of the meeting is the peer review body's discharge of its responsibility to evaluate and improve the quality of care rendered by health facilities and health practitioners, pursuant to the powers granted to the health authority. The peer review body and its members shall receive, to the fullest extent, all immunities, privileges, and protections available to those peer review bodies, their individual members, and persons or entities assisting in the peer review process, including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.

(p) Notwithstanding any other provision of law, those records of the health authority and of the county that reveal the health authority's rates of payment for health care services or the health authority's deliberative processes, discussions, communications, or any other portion of the negotiations with providers of health care services for rates of payment, shall not be required to be disclosed pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or any similar local law requiring the disclosure of public records. However, three years after a contract or amendment to a contract is fully executed, the portion of the contract or amendment containing the rates of payment shall be open to inspection.

(q) Notwithstanding the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), or Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of, and Chapter 9 (commencing with Section 54950) of Part 1 of Division 2 of Title 5 of, the Government Code, or any other provision of state or local law requiring disclosure of public records, those records of a peer review body, as defined in paragraph (1) of subdivision (a) of Section 805 of the Business and Professions Code, formed pursuant to the powers granted to the health authority authorized by this section, shall not be required to be disclosed. The records and proceedings of the peer review body and its individual members shall receive, to the fullest extent, all immunities, privileges, and protections available to those records and proceedings,

including those afforded by Section 1157 of the Evidence Code and Section 1370 of the Health and Safety Code.

(r) Except as expressly provided by other provisions of this section, all exemptions and exclusions from disclosure as public records pursuant to the California Public Records Act, including, but not limited to, those pertaining to trade secrets and information withheld in the public interest, shall be fully applicable for all state agencies and local agencies with respect to all writings that the health authority is required to prepare, produce, or submit pursuant to this section.

(s) (1) Any health authority formed pursuant to this section shall obtain licensure as a health care service plan under the Knox-Keene Health Care Service Plan Act of 1975 (Chapter 2.2 (commencing with Section 1340) of Division 3 of the Health and Safety Code).

(2) Notwithstanding subdivisions (b) and (t), a health authority may not operate health plans or programs for individuals covered under Subchapter XVIII (commencing with Section 1395) of Chapter 7 of Title 42 of the United States Code, or for private businesses, until the health authority is in full compliance with all of the requirements of the Knox-Keene Health Care Service Plan Act of 1975, including tangible net equity requirements applicable to a licensed health care service plan.

(t) Commencing on the date that the health authority first receives Medi-Cal capitated payments for the provision of health care services to Medi-Cal beneficiaries and until the time that the health authority is in compliance with all the requirements regarding tangible net equity applicable to a health care service plan licensed under the Knox-Keene Health Care Service Plan Act of 1975, the following provisions shall apply:

(1) The health authority may select and design its automated management information system, but the department, in cooperation with the health authority, prior to making capitated payments, shall test the system to ensure that the system is capable of producing detailed, accurate, and timely financial information on the financial condition of the health authority and any other information generally required by the department in its contracts with health care service plans.

(2) In addition to the reports required by the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder, the health authority shall provide on a monthly basis to the department, the Department of Managed Health Care, and the members of the health authority, a copy of the automated report described in paragraph (1) and a projection of assets and liabilities, including those that have been incurred but not reported, with an explanation of material increases or decreases in current or projected assets or liabilities. The explanation of increases and decreases in assets

or liabilities shall be provided, upon request, to a hospital, independent physicians' practice association, or community clinic, that has contracted with the health authority to provide health care services.

(3) In addition to the reporting and notification obligations the health authority has under the Knox-Keene Health Care Service Plan Act of 1975, the chief executive officer or director of the health authority shall immediately notify the department, the Department of Managed Health Care, and the members of the governing board of the health authority in writing of any fact or facts that, in the chief executive officer's or director's reasonable and prudent judgment, is likely to result in the health authority being unable to meet its financial obligations to health care providers or to other parties. Written notice shall describe the fact or facts, the anticipated fiscal consequences, and the actions that will be taken to address the anticipated consequences.

(4) The Department of Managed Health Care shall not waive or vary, nor shall the department request the Department of Managed Health Care to waive or vary, the tangible net equity requirements for a health authority under the Knox-Keene Health Care Service Plan Act of 1975 after three years from the date of commencement of capitated payments to the health authority. Until the time the health authority is in compliance with all of the tangible net equity requirements under the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder, the health authority shall develop a stop-loss program appropriate to the risks of the health authority. The program shall be satisfactory to both the department and the Department of Managed Health Care.

(5) In the event that the health authority votes to file a petition of bankruptcy, or the board of supervisors notifies the department of its intent to terminate the health authority, the department shall immediately convert the authority's Medi-Cal beneficiaries to either of the following:

(A) To other managed care contractors when available, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees.

(B) To the extent that other managed care contractors are unavailable or the department determines that the action is otherwise in the best interest of any particular beneficiary, to a fee-for-service reimbursement system pending the availability of managed care contractors, provided those contractors are able to demonstrate that they can absorb the increased enrollment without detriment to the provision of health care services to their existing enrollees, or if the department determines that providing care to any particular beneficiary pursuant to a fee-for-service

reimbursement system is no longer necessary to protect the continuity of care or other interests of the beneficiary. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted to a fee-for-service reimbursement system or managed care contractor may make a choice to be enrolled in another managed care system, if one is available, in full compliance with the federal freedom-of-choice requirements.

(6) The health authority shall submit to a review of financial records when the department determines, based on data reported by the health authority or otherwise, that the health authority will not be able to meet its financial obligations to health care providers contracting with the health authority. Where the review of financial records determines that the health authority will not be able to meet its financial obligations to contracting health care providers for the provision of health care services, the director shall immediately terminate the contract between the health authority and the state, and immediately convert the health authority Medi-Cal beneficiaries in accordance with paragraph (5) in order to ensure uninterrupted provision of health care services to the beneficiaries and to minimize financial disruption to providers. The action of the director shall be the final administrative determination. Beneficiary eligibility for Medi-Cal shall not be affected by this action. Beneficiaries who have been or who are scheduled to be converted under paragraph (5) may make a choice to be enrolled in another managed care plan, if one is available, in full compliance with federal freedom-of-choice requirements.

(7) It is the intent of the Legislature that the department shall implement Medi-Cal capitated enrollments in a manner that ensures that appropriate levels of health care services will be provided to Medi-Cal beneficiaries and that appropriate levels of administrative services will be furnished to health care providers. The contract between the department and the health authority shall authorize and permit the department to administer the number of covered Medi-Cal enrollments in such a manner that the health authority's provider network and administrative structure are able to provide appropriate and timely services to beneficiaries and to participating providers.

(8) In the event a health authority is terminated, files for bankruptcy, or otherwise no longer functions for the purpose for which it was established, the county shall, with respect to compensation for provision of health care services to beneficiaries, occupy no greater or lesser status than any other health care provider in the disbursement of assets of the health authority.

(9) Nothing in this subdivision shall be construed to impair or diminish the authority of the Director of the Department of Managed Health Care under the Knox-Keene Health Care Service Plan Act of

1975, nor shall anything in this section be construed to reduce or otherwise limit the obligation of a health authority licensed as a health care service plan to comply with the requirements of the Knox-Keene Health Care Service Plan Act of 1975, and the rules of the Director of the Department of Managed Health Care promulgated thereunder.

(u) In the event a health authority may no longer function for the purposes for which it is established, at the time the health authority's then-existing obligations have been satisfied or the health authority's assets have been exhausted, the board of supervisors may, by ordinance, terminate the health authority.

(v) (1) Prior to the termination of the health authority, the board of supervisors shall notify the department of its intent to terminate the health authority. The department shall conduct an audit of the health authority's records within 30 days of the notification to determine the liabilities and assets of the health authority.

(2) The department shall report its findings to the board within 10 days of completion of the audit. The board shall prepare a plan to liquidate or otherwise dispose of the assets of the health authority and to pay the liabilities of the health authority to the extent of the health authority's assets, and present the plan to the department within 30 days upon receipt of these findings.

(w) Any assets of the health authority shall be disposed of pursuant to provisions contained in the contract entered into between the state and the health authority pursuant to this section.

(x) Upon termination of a health authority by the board, the county shall manage any remaining assets of the health authority until superseded by a department-approved plan. Any liabilities of the health authority shall not become obligations of the county upon either the termination of the health authority or the liquidation or disposition of the health authority's remaining assets.

(y) This section shall apply to any county health authority or any county special commission operating under this article or Article 2.81 (commencing with Section 14087.96), except to the extent that this section conflicts with Sections 14087.31, 14087.35, and 14087.36 or Article 2.81 (commencing with Section 14087.96).

SEC. 12.5. Section 14087.51 of the Welfare and Institutions Code is amended to read:

14087.51. (a) It is necessary that a special commission be established in San Mateo County and in any other county designated by the California Medical Assistance Commission in order to meet the problems of the delivery of publicly assisted medical care in the counties and to demonstrate ways of promoting quality care and cost efficiency.

(b) The Board of Supervisors of San Mateo County and of the designated counties may, by ordinance, establish commissions to do any or all of the following:

(1) Negotiate the exclusive contracts specified in Section 14087.5 and to arrange for the provision of health care services provided pursuant to this chapter.

(2) Enter into contracts for the provision of health care services to subscribers in the Healthy Families Program.

(3) Enter into agreements under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(c) In addition to the authority specified in subdivision (b), the Board of Supervisors of San Mateo County may, by ordinance, authorize the commission established pursuant to this section to provide health care delivery systems for any or all of the following persons:

(1) Persons who are eligible to receive medical benefits under this chapter in the county, including, but not limited to, persons who are eligible through federal waiver or a pilot project.

(2) Persons who are eligible to receive medical benefits under both Title 18 and Title 19 of the federal Social Security Act.

(3) Persons who are eligible to receive medical benefits under Title 18 of the federal Social Security Act.

(4) Persons who are eligible to receive medical benefits under publicly supported programs if the commission and participating providers acting pursuant to subcontracts with the commission agree to hold harmless the beneficiaries of the publicly supported programs if the contract between the sponsoring government agency and the commission does not ensure sufficient funding to cover program costs.

(d) If the board of supervisors elects to enact an ordinance pursuant to this section, all rights, powers, duties, privileges, and immunities vested in a county by an article shall be vested in the county commission. Any reference in this article to ''county'' shall mean a commission established pursuant to this section.

(e) The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, and any other matters as the board of supervisors deems necessary or convenient for the conduct of the county commission's activities. A commission so established shall be considered a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. All commissioners shall be appointed by majority vote of the board of supervisors and shall serve at the pleasure thereof. The board of supervisors may appoint no more than two of its own members to serve on the commission.

(f) As an alternative to establishing a separate commission, the enabling ordinance may designate the board of supervisors itself as the commission authorized by this article.

SEC. 12.6. Section 14087.54 of the Welfare and Institutions Code is amended to read:

14087.54. (a) Any county or counties may establish a special commission in order to meet the problems of the delivery of publicly assisted medical care in the county or counties and to demonstrate ways of promoting quality care and cost efficiency.

(b) A county board of supervisors may, by ordinance, establish a commission to negotiate the exclusive contract specified in Section 14087.5 and to arrange for the provision of health care services provided pursuant to this chapter. The boards of supervisors of more than one county may also establish a single commission with the authority to negotiate an exclusive contract and to arrange for the provision of services in those counties. If a board of supervisors elects to enact this ordinance, all rights, powers, duties, privileges, and immunities vested in a county by this article shall be vested in the county commission. Any reference in this article to ''county'' shall mean a commission established pursuant to this section.

(c) It is the intent of the Legislature that if a county forms a commission pursuant to this section, the county shall, with respect to its medical facilities and programs occupy no greater or lesser status than any other health care provider in negotiating with the commission for contracts to provide health care services.

(d) The enabling ordinance shall specify the membership of the county commission, the qualifications for individual members, the manner of appointment, selection, or removal of commissioners, and how long they shall serve, and any other matters as a board of supervisors deems necessary or convenient for the conduct of the county commission's activities. A commission so established shall be considered an entity separate from the county or counties, shall be considered a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code, and shall file the statement required by Section 53051 of the Government Code. The commission shall have in addition to the rights, powers, duties, privileges, and immunities previously conferred, the power to acquire, possess, and dispose of real or personal property, as may be necessary for the performance of its functions, to employ personnel and contract for services required to meet its obligations, to sue or be sued, and to enter into agreements under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code. Any obligations of a commission, statutory, contractual, or otherwise, shall be the obligations

solely of the commission and shall not be the obligations of the county or of the state.

(e) Upon creation, a commission may borrow from the county or counties, and the county or counties may lend the commission funds, or issue revenue anticipation notes to obtain those funds necessary to commence operations.

(f) In the event a commission may no longer function for the purposes for which it was established, at such time as the commission's then existing obligations have been satisfied or the commission's assets have been exhausted, the board or boards of supervisors may by ordinance terminate the commission.

(g) Prior to the termination of a commission, the board or boards of supervisors shall notify the State Department of Health Services of its intent to terminate the commission. The department shall conduct an audit of the commission's records within 30 days of the notification to determine the liabilities and assets of the commission. The department shall report its findings to the board or boards within 10 days of completion of the audit. The board or boards shall prepare a plan to liquidate or otherwise dispose of the assets of the commission and to pay the liabilities of the commission to the extent of the commission's assets, and present the plan to the department within 30 days upon receipt of these findings.

(h) Upon termination of a commission by the board or boards, the county or counties shall manage any remaining assets of the commission until superseded by a department approved plan. Any liabilities of the commission shall not become obligations of the county or counties upon either the termination of the commission or the liquidation or disposition of the commission's remaining assets.

(i) Any assets of a commission shall be disposed of pursuant to provisions contained in the contract entered into between the state and the commission pursuant to this article.

SEC. 12.7. Section 14087.9605 of the Welfare and Institutions Code is amended to read:

14087.9605. (a) The board of supervisors may, by ordinance, resolution, or other action, establish a commission in order to meet the problems of delivery of publicly assisted medical care in the county and demonstrate ways of promoting quality care and cost efficiency. The health care services provided by the commission shall include, but are not limited to, services covered under this chapter provided on a coordinated managed care basis. The commission shall operate the local initiative that provides or arranges for the delivery of health care services in all or part of the geographic area of the county, in a manner that is consistent with managed care principles, techniques, and practices directed at ensuring cost-effective and adequate access to quality care,

without discrimination on the basis of medical condition, diagnosis, or illness, in an amount, duration, and scope that is sufficient to reasonably achieve its purpose for enrollees in the local initiative. If the board of supervisors establishes a commission, all rights, powers, duties, privileges, and immunities vested in the county pursuant to the contract with the department under this article shall be vested in the commission.

(b) (1) The commission shall be considered a public entity that is a local unit of government and that is separate from the county, shall file the statement required by Section 53051 of the Government Code, and shall be considered a public entity for purposes of Division 3.6 (commencing with Section 810) of Title 1 of the Government Code. The commission, members of the commission, and employees of the commission shall be protected by the immunities applicable to public entities and public employees governed by Part 2 (commencing with Section 814) of Division 3.6 of Title 1 of the Government Code, except as provided by other statutes or regulations that apply expressly to the commission.

(2) The commission shall have all power necessary and appropriate to do all of the following:

(A) Operate programs involving health care services, including, but not limited to, the power to own and operate one or more health plans.

(B) To enter into agreements with any public or private entity or entities to provide or arrange for health care services on a capitated or noncapitated basis.

(C) To acquire, possess, and dispose of real or personal property.

(D) To employ personnel and contract for services required to meet its obligations.

(E) To sue or be sued.

(F) To enter into agreements under Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

(3) The commission may enter into contracts with public and private health care providers to provide health care and related services to individuals enrolled in any health plan or health program operated as part of the local initiative.

(c) Nothing in this section shall be construed to authorize the commission to operate any health care program other than the local initiative described in the strategic plan as it currently exists or as it may be amended by the department.

SEC. 13. Section 14094.3 of the Welfare and Institutions Code is amended to read:

14094.3. (a) Notwithstanding this article or Section 14093.05 or 14094.1, CCS covered services shall not be incorporated into any Medi-Cal managed care contract entered into after August 1, 1994, pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.8

(commencing with Section 14087.5), Article 2.9 (commencing with Section 14088), Article 2.91 (commencing with Section 14089), Article 2.95 (commencing with Section 14092); or either Article 2 (commencing with Section 14200), or Article 7 (commencing with Section 14490) of Chapter 8, until September 1, 2008, except for contracts entered into for county organized health systems or Regional Health Authority in the Counties of San Mateo, Santa Barbara, Solano, Yolo, Marin, and Napa.

(b) Notwithstanding any other provision of this chapter, providers serving children under the CCS program who are enrolled with a Medi-Cal managed care contractor but who are not enrolled in a pilot project pursuant to subdivision (c) shall continue to submit billing for CCS covered services on a fee-for-service basis until CCS covered services are incorporated into the Medi-Cal managed care contracts described in subdivision (a).

(c) (1) The department may authorize a pilot project in Solano County in which reimbursement for conditions eligible under the CCS program may be reimbursed on a capitated basis pursuant to Section 14093.05, and provided all CCS program's guidelines, standards, and regulations are adhered to, and CCS program's case management is utilized.

(2) During the time period described in subdivision (a), the department may approve, implement, and evaluate limited pilot projects under the CCS program to test alternative managed care models tailored to the special health care needs of children under the CCS program. The pilot projects may include, but need not be limited to, coverage of different geographic areas, focusing on certain subpopulations, and the employment of different payment and incentive models. Pilot project proposals from CCS program-approved providers shall be given preference. All pilot projects shall utilize CCS program-approved standards and providers pursuant to Section 14094.1.

(d) (1) The department shall submit to the appropriate committees of the Legislature an evaluation of pilot projects established pursuant to subdivision (c) based on at least one full year of operation.

(2) The evaluation required by paragraph (1) shall address the impact of the pilot projects on outcomes as set forth in paragraph (4) and, in addition, shall do both of the following:

(A) Examine the barriers, if any, to incorporating CCS covered services into the Medi-Cal managed care contracts described in subdivision (a).

(B) Compare different pilot project models with the fee-for-service system. The evaluation shall identify, to the extent possible, those factors that make pilot projects most effective in meeting the special needs of children with CCS eligible conditions.

(3) CCS covered services shall not be incorporated into the Medi-Cal managed care contracts described in subdivision (a) before the evaluation process has been completed.

(4) The pilot projects shall be evaluated to determine if:

(A) All children enrolled with a Medi-Cal managed care contractor described in subdivision (a) identified as having a CCS eligible condition are referred in a timely fashion for appropriate health care.

(B) All children in the CCS program have access to coordinated care that includes primary care services in their own community.

(C) CCS program standards are adhered to.

(e) For purposes of this section, CCS covered services include all program benefits administered by the program specified in Section 123840 of the Health and Safety Code regardless of the funding source.

(f) Nothing in this section shall be construed to exclude or restrict CCS eligible children from enrollment with a managed care contractor, or from receiving from the managed care contractor with which they are enrolled primary and other health care unrelated to the treatment of the CCS eligible condition.

SEC. 13.5. Section 14105.19 of the Welfare and Institutions Code is amended to read:

14105.19. (a) Due to the significant state budget deficit projected for the 2003–04 fiscal year, and in order to implement changes in the level of funding for health care services, the Director of Health Services shall reduce provider payments as specified in this section.

(b) (1) Payments shall be reduced by 5 percent for Medi-Cal program services for dates of service on and after January 1, 2004.

(2) Payments shall be reduced by 5 percent for non-Medi-Cal programs described in Section 14105.18, for dates of service on and after January 1, 2004.

(3) The payments made to managed health care plans shall be reduced by the actuarial equivalent amount of 5 percent at the time of the plan's next rate determination.

(4) Reductions to payments for durable medical equipment shall be made at the discretion of the director. If any reduction is made pursuant to this paragraph, the reduction may not exceed 5 percent.

(c) The services listed below shall be exempt from the payment reductions specified in subdivision (b):

(1) Acute hospital inpatient services.

(2) Federally qualified health clinic services.

(3) Rural health clinic services.

(4) Outpatient services billed by a hospital.

(5) Payments to state hospitals or developmental centers.

(6) Payments to long-term care facilities as defined by the department, including, but not limited to, freestanding nursing facilities,

distinct-part nursing facilities, intermediate care facilities for developmentally disabled individuals, subacute care units of skilled nursing facilities, rural swing beds, ventilator weaning services, special treatment program services, adult day health care centers, and hospice room and board services.

(7) Clinical laboratory or laboratory services as defined in Section 51137.2 of Title 22 of the California Code of Regulations.

(8) Contract services as designated by the Director of Health Services pursuant to subdivision (e).

(9) Supplemental reimbursement provided pursuant to Sections 14105.27, 14105.95, and 14105.96.

(10) Services provided on or after July 1, 2004, through the California Children's Services Program pursuant to Article 5 (commencing with Section 123800) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, the Genetically Handicapped Persons Program, pursuant to Article 1 (commencing with Section 125125) of Chapter 2 of Part 5 of Division 106 of the Health and Safety Code, the Child Health and Disability Prevention Program pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106 of the Health and Safety Code, the Multipurpose Senior Services Program pursuant to Chapter 8 (commencing with Section 9560) of Division 8.5, the Breast and Cervical Cancer Early Detection Program established pursuant to Article 1.3 (commencing with Section 104150) of Chapter 2 of Part 1 of Division 103 of the Health and Safety Code, and the breast cancer programs specified in Section 30461.6 of the Revenue and Taxation Code.

(11) Legend and nonlegend drugs dispensed by pharmacy providers reimbursed pursuant to Section 14105.45, effective September 1, 2004.

(d) Subject to the exception for services listed in subdivision (c), the payment reductions required by subdivision (b) shall apply to the services rendered by any provider who may be authorized to bill for the service, including, but not limited to, physicians, podiatrists, nurse practitioners, certified nurse midwives, nurse anesthetists, and organized outpatient clinics.

(e) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement this section by means of provider bulletin, or similar instruction, without taking regulatory action.

(f) The department shall promptly seek all necessary federal approvals in order to implement this section, including necessary amendments to the state plan.

(g) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 14. Section 14105.336 of the Welfare and Institutions Code is amended to read:

14105.336. (a) The department shall reduce reimbursements to pharmacists by fifty cents ($0.50) per prescription, effective January 1, 1995, for all drug prescription claims reimbursed through the Medi-Cal program.

(b) This section shall become inoperative on September 1, 2004.

SEC. 15. Section 14105.337 of the Welfare and Institutions Code is amended to read:

14105.337. (a) Effective January 1, 2000, the department shall increase reimbursement to pharmacists by twenty-five cents ($0.25) per prescription for all drug prescription claims reimbursed through the Medi-Cal program.

(b) Effective July 1, 2002, the department shall increase reimbursement to pharmacists by an additional fifteen cents ($0.15) per prescription for all drug prescription claims reimbursed through the Medi-Cal program.

(c) (1) The department shall reduce reimbursement to pharmacists in the amount reimbursement was increased pursuant to subdivisions (a) and (b) with respect to pharmacy services rendered on and after the date that this subdivision is enacted. Claims submitted by pharmacists for beneficiaries residing in a nursing facility shall be exempt from this subdivision.

(2) This subdivision shall become inoperative on July 1, 2004.

(d) This section shall become inoperative on September 1, 2004.

SEC. 16. Section 14105.45 of the Welfare and Institutions Code is repealed.

SEC. 17. Section 14105.45 is added to the Welfare and Institutions Code, to read:

14105.45. (a) For purposes of this section, the following definitions shall apply:

(1) ''Average sales price'' means, of a drug or biological, the sales price for a National Drug Code for a calendar quarter for a manufacturer for a unit, calculated as follows:

(A) The manufacturer's sales to all purchasers, excluding sales exempt under subparagraph (B), of a drug or biological in the United States in the calendar quarter, divided by the total number of the units of that drug or biological sold by the manufacturer in that calendar quarter.

(B) In calculating the manufacturer's average sales price, the following sales shall be excluded:

(i) Sales exempt from inclusion in the determination of ''best price'' under Section 1927(c)(1)(C)(i) of the Social Security Act (42 U.S.C. Sec. 1396r-8(c)(1)(C)(i)).

(ii) Any other sales as the Secretary of the United States Department of Health and Human Services identifies as sales to an entity that are merely nominal in amount, as applied for purposes of Section 1927(c)(1)(C)(ii)(III) of the Social Security Act (42 U.S.C. Sec. 1396r-8(c)(1)(C)(ii)(III)), except as the secretary may otherwise provide.

(C) In calculating the manufacturer's average sales price, the price shall include volume discounts, prompt pay discounts, cash discounts, free goods that are contingent on any purchase requirement, chargebacks, and rebates, other than rebates under Section 1927 of the Social Security Act (42 U.S.C. Sec. 1396r-8). After 2004, the secretary may include in the manufacturer's average sales price other price concessions, which may be based on recommendations of the Inspector General of the United States Department of Health and Human Services, that would result in a reduction of the cost to the purchaser.

(D) In the case of a drug or biological during an initial period, not to exceed a full calendar quarter, in which data on the prices for sales for the drug or biological are not sufficiently available from the manufacturer to compute an average sales price for the drug or biological, the department may determine the amount payable under this section for the drug or biological based on the wholesale selling price.

(2) ''Average wholesale price'' means the price for a drug product listed in the department's primary price reference source.

(3) ''Direct price'' means the price for a drug product purchased by a pharmacy directly from a drug manufacturer listed in the department's primary reference source.

(4) ''Estimated acquisition cost'' means the department's best estimate of the price generally and currently paid by providers for a drug product sold by a particular manufacturer or principal labeler in a standard package.

(5) ''Federal upper limit'' means the maximum per unit reimbursement when established by the Centers for Medicare and Medicaid Services and published by the department in Medi-Cal pharmacy provider bulletins and manuals.

(6) ''Generically equivalent drugs'' means drug products with the same active chemical ingredients of the same strength, quantity, and dosage form, and of the same generic drug name, as determined by the United States Adopted Names (USAN) and accepted by the federal Food and Drug Administration (FDA), as those drug products having the same chemical ingredients.

(7) ''Legend drug'' means any drug whose labeling states ''Caution: Federal law prohibits dispensing without prescription,'' ''Rx only,'' or words of similar import.

(8) ''Maximum allowable ingredient cost'' (MAIC) means the maximum amount the department will reimburse Medi-Cal pharmacy providers for generically equivalent drugs.

(9) ''Innovator multiple source drug,'' ''noninnovator multiple source drug,'' and ''single source drug'' have the same meaning as those terms are defined in Section 1396r-8(k)(7) of Title 42 of the United States Code.

(10) ''Nonlegend drug'' means any drug whose labeling does not contain the statement referenced in paragraph (7).

(11) ''Wholesale selling price'' means the weighted (by unit volume) mean price, including discounts and rebates, paid by a pharmacy to a wholesale drug distributor.

(12) ''Selling price'' means the price used in the establishment of the estimated acquisition cost. The department shall base the selling price on the average sales price reported by manufacturers pursuant to subdivision (c). The selling price shall not be considered confidential and shall be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(b) (1) Reimbursement to Medi-Cal pharmacy providers for legend and nonlegend drugs shall consist of the estimated acquisition cost of the drug plus a professional fee for dispensing. The professional fee shall be seven dollars and twenty-five cents ($7.25) per dispensed prescription. The professional fee for legend drugs dispensed to a beneficiary residing in a skilled nursing facility or intermediate care facility shall be eight dollars ($8) per dispensed prescription. For purposes of this paragraph ''skilled nursing facility'' and ''intermediate care facility'' shall have the same meaning as defined in Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations.

(2) The department shall establish the estimated acquisition cost of legend and nonlegend drugs as follows:

(A) For single source and innovator multiple source drugs, the estimated acquisition cost shall be equal to the lowest of the average wholesale price minus 17 percent, the selling price, the federal upper limit, or the MAIC.

(B) For noninnovator multiple source drugs, the estimated acquisition cost shall be equal to the lowest of the average wholesale price minus 17 percent, the selling price, the federal upper limit, or the MAIC.

(C) The department shall not use the direct price paid by pharmacies to drug manufacturers to establish estimated acquisition cost.

(3) For purposes of paragraph (2), the department shall establish a list of MAICs for generically equivalent drugs, which shall be published in pharmacy provider bulletins and manuals. The department shall update

the list of MAICs and establish additional MAICs in accordance with all of the following:

(A) The department shall base the MAIC on the mean of the wholesale selling prices of drugs generically equivalent to the particular innovator drug that are available in California from wholesale drug distributors selected by the department.

(B) The department shall notify each selected wholesale drug distributor, in writing, that the wholesale drug distributor has been identified as a source of wholesale selling price information.

(C) Wholesale drug distributors notified pursuant to subparagraph (B) shall, no later than 30 days after the end of each month, and in a format determined by the department, provide to the department the wholesale selling price of all legend and nonlegend drugs sold to pharmacies.

(D) The department shall update MAICs at least every three months and notify Medi-Cal providers at least 30 days prior to the effective date of a MAIC.

(E) The failure of a wholesaler to report wholesale selling prices pursuant to subparagraph (C) of paragraph (3) of subdivision (b) shall result in the director denying payment for all drugs supplied by that wholesaler to Medi-Cal program beneficiaries. The denial of payment shall be effective no sooner than 30 days after notifying pharmacy providers of the change through a provider bulletin.

(F) All pricing information reported by a wholesale distributor to the department pursuant to this section shall be considered confidential and corporate proprietary information and shall not be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code).

(c) (1) Manufacturers and principal labelers of legend and nonlegend drugs shall, no later than 30 days after the end of each calendar quarter, and in a format determined by the department, provide to the department the average sales price of each of the manufacturer's legend and nonlegend drugs.

(2) The department shall update the Medi-Cal claims processing system to reflect the selling price of drugs not later than 62 calendar days after the end of each calendar quarter.

(3) For manufacturers that fail to provide average selling price information pursuant to this section, the department may subject their drugs' availability to prior authorization. The provisions of this subdivision shall be included in contracts or contract amendments entered into by the department pursuant to Section 14105.3, 14105.33, 14105.37, or 14105.39, and manufacturers shall continue rebate payments according to the rebate provisions in the contracts. Nothing in this paragraph shall affect a Medi-Cal beneficiary's ability to receive

continuity of care for 60 days as contained in subdivision (i) of Section 14105.33.

(4) All pricing information reported by manufacturers and principal labelers of legend and nonlegend drugs to the department pursuant to this section shall be considered confidential and corporate proprietary information and shall not be subject to disclosure under the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code.

(d) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may take the actions specified in this section by means of a provider bulletin or notice, policy letter, or other similar instructions, without taking regulatory action.

SEC. 18. Section 14105.46 of the Welfare and Institutions Code is repealed.

SEC. 18.5. Section 14110.65 of the Welfare and Institutions Code is repealed.

SEC. 19. Section 14132.100 of the Welfare and Institutions Code is amended 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 Section 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. For FQHCs and RHCs that filed consolidated cost reports for multiple sites to establish the initial prospective payment reimbursement rate, the 1.75 percent threshold shall be applied to the average per-visit rate of all sites for the

purposes of calculating the cost associated with a scope-of-service change. "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.

SEC. 20. Section 14132.105 is added to the Welfare and Institutions Code, to read:

14132.105. (a) The department may adopt emergency regulations to implement Section 14132.100 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).

(b) The adoption of emergency regulations described in subdivision (a) shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. 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.

(c) Notwithstanding subdivisions (a) and (b), the director may issue any instructions and forms that are consistent with and necessary to implement subdivisions (e), (f), (h), and (i) of Section 14132.100, and Section (A), and Sections (D) through (L), at pages 6 through 6R, of Attachment 4.19-B to the California Medicaid State Plan in effect on January 1, 2003, relating to the reimbursement rate methodologies for federally qualified health center services and rural health clinic services. The adoption of these instructions and forms shall not be subject 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). Actions pursuant to this subdivision must be taken within 30 days following the effective date of the act adding this section.

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

SEC. 21. Section 14132.107 is added to the Welfare and Institutions Code, to read:

14132.107. Claims for reimbursement under subdivision (e) of Section 14132.100 shall be finalized by the department within 150 days of receipt of the claims for reimbursement. These claims for reimbursement shall be paid within 30 days of being finalized by the department. However, the payment of those amounts that are disputed shall be subject to the requirements, timeframes, and procedures

specified in Section 14171. Scope changes going forward shall be finalized within 90 days of receipt and paid within 30 days of being finalized by the department.

SEC. 22. Section 14132.108 is added to the Welfare and Institutions Code, to read:

14132.108. Notwithstanding any other provision of law, requests for rate adjustments for scope-of-service rate changes under paragraph (4) of subdivision (e) of Section 14132.100 for an FQHC's or RHC's fiscal year ending in 2004 shall be deemed to have been filed in a timely manner so long as it is filed within 90 days following the end of the 150-day timeframe applicable to scope-of-service changes occurring from January 1, 2001, to the end of an FQHC's or RHC's 2003 fiscal year, as specified in paragraph (6) of subdivision (e) of Section 14132.100.

SEC. 23. Section 14133.01 is added to the Welfare and Institutions Code, to read:

14133.01. (a) Notwithstanding any other provision of law, the director or his or her designee may apply prior authorization by designing a sampling methodology that will result in a generally acceptable audit standard for approval of a treatment authorization request (TAR), or a class of TARs. The director or his or her designee shall determine the applicable sampling methodology based upon health care industry standards and discussions with applicable Medi-Cal providers or their representatives. This sampling methodology shall be implemented by no later than July 1, 2005, and an outline of it shall be provided to the fiscal and policy committees of both houses of the Legislature. It is the intent of the Legislature for the department to review the sampling methodology on an ongoing basis and update it as applicable on a periodic basis in order to keep abreast of health care industry trends and the need to manage an efficient and effective Medi-Cal program.

(b) The department shall pursue additional means to improve and streamline the treatment authorization request process including, where applicable, those identified by independent analyses such as the July 2003 report by the California Healthcare Foundation entitled Medi-Cal Treatment Authorizations and Claims Processing: Improving Efficiency and Access to Care, and those identified by Medi-Cal providers. It is the Legislature's intent that any identified improvements be cost-beneficial to the state and to the Medi-Cal program as a whole.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific, this section by means of all-county letters, provider bulletins, or similar instructions. Thereafter, the department may adopt regulations in accordance with the

requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 24. Section 14154.5 is added to the Welfare and Institutions Code, to read:

14154.5. (a) Each county shall work, on a routine basis, any error alert from the department's Medi-Cal Eligibility Data System (MEDS). Any alert that affects eligibility or the share of cost that is received by the 10th working day of the month shall be processed in time for the change to be effective the beginning of the following month. Any alert that affects eligibility or the share of cost that is received after the 10th working day of the month shall be processed in time for the change to be effective the beginning of the month after the following month. The department shall consult with the County Welfare Directors Association to define those alerts that affect eligibility or the share of cost.

(b) The county shall submit reconciliation files of its Medi-Cal eligible population to the department every three months, based upon a schedule determined by the department and in a format prescribed by the department, to identify any discrepancies between eligibility files in the county records and eligibility as reflected in MEDS. Counties shall be notified of any changes to the standard format for submitting reconciliation files sufficiently in advance to allow for budgeting, scheduling, development, testing, and implementation of any required change in county automated eligibility systems.

(c) For those records that are on the county's files, but not on MEDS, the county shall receive worker alerts from the department that identify these cases, and the county shall fix any data discrepancies. Any worker alert received by the 10th working day of the month shall be processed in time for the change to be effective the beginning of the following month. Any worker alert received after the 10th working day of the month shall be processed in time for the change to be effective the beginning of the month after the following month.

(d) In regard to any record that is on MEDS but not on the county's file, the county shall either correct the county record or MEDS, whichever is appropriate, within the same timeframes specified in subdivision (c).

(e) The department shall terminate a MEDS eligible record if the person is not eligible on the county's file when there has been no eligibility update on the MEDS record for six months.

(f) (1) If the department finds that a county is not performing all of the following activities, the county shall, within 60 days, submit a corrective action plan to the department for approval.

(A) Conducting reconciliations as required in subdivision (b).

(B) Processing 95 percent of worker alerts referred to in subdivisions (c) and (d), within the timeframes specified.

(C) Processing 90 percent of the error alerts referred to in subdivision (a) that affect eligibility or the share of cost, within the timeframes specified.

(2) The corrective action plan shall, at a minimum, include steps that the county shall take to improve its performance on the requirements with which the county is out of compliance. The plan shall establish interim benchmarks for improvement that shall be expected to be met by the county in order to avoid sanctions.

(g) If the county does not meet the interim benchmarks for improvement standards, the department may, in its sole discretion, reduce the allocation of funds to that county in the following year by 2 percent. Any funds so reduced may be restored by the department if, in the determination of the department, sufficient improvement has been made by the county in meeting the performance standards during the year for which the funds were reduced.

(h) The department, in consultation with the County Welfare Directors Association, shall investigate features that could be installed in MEDS to reduce the number of alerts and streamline the reconciliation process.

(i) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific this section by means of all county letters, provider bulletins, or similar instructions. Thereafter, the department may adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 25. Section 14170.11 is added to the Welfare and Institutions Code, to read:

14170.11. (a) No person or entity shall submit a claim to the department or its fiscal intermediaries for reimbursement under the Medi-Cal program for a nerve conduction test or for electromyography unless the person or entity's records contains a copy, for each person performing each test or electromyography, for which a claim is submitted, a certificate or diploma of satisfactory completion of a neurology or physical medicine and rehabilitation residency program accredited by the Accreditation Council of Graduate Medical Education (ACGME).

(b) The department may identify by publication, in provider bulletins or similar instructions, requirements that reimbursement from the Medi-Cal program shall only be made for the provision of certain procedures, tests, examinations, or other medical services provided by persons who possess a particular level of education, experience, and training as evidenced by satisfactory completion of medical residency

programs or board certification in a particular field and that those submitting claims shall maintain a copy of this certificate or diploma.

(c) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement, interpret, or make specific, this section by means of all county letters, provider bulletins, or similar instructions. Thereafter, the department may adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 26. Section 14464.5 of the Welfare and Institutions Code is amended to read:

14464.5. (a) For purposes of this article, the following definitions apply:

(1) ''Capitation payment'' means the monthly amount paid by the state to a designated Medi-Cal managed care plan in exchange for contracted health care services procured by means of the Medi-Cal managed care contracts described in paragraph (3).

(2) ''Capitation rate'' means the per member per month rate used to calculate the capitation payments.

(3) ''Medi-Cal managed care plan'' means any Medi-Cal managed care plan contracting with the department to provide services to enrolled Medi-Cal beneficiaries pursuant to Article 2.7 (commencing with Section 14087.3), Article 2.9 (commencing with Section 14088), Article 2.91 (commencing with Section 14089), and Section 14087.51 of Chapter 7, or pursuant to this chapter, and that is also an organization that meets the criteria in Section 1396b(w)(7)(A)(viii) of Title 42 of the United States Code.

(4) ''Total operating revenue'' means non-Medicare amounts received by a managed care plan for the coverage or providing of all health care services, including amounts received in exchange for health care procured by means of a Medi-Cal managed care contract as described in paragraph (3). Total operating revenue does not include amounts received by a managed care plan pursuant to a subcontract with a Medi-Cal managed care plan to provide health care services to Medi-Cal beneficiaries.

(b) The department shall impose, on an annual basis, a quality improvement fee no earlier than January 1, 2005. The quality improvement fee shall be paid to the state monthly and shall be 6 percent of each Medi-Cal managed care plan's total operating revenue. The quality improvement fee shall be subject to all of the following provisions:

(1) The quality improvement fee shall be paid monthly to the state and is due within 15 calendar days following the close of each month and

shall be calculated on the prior month's total operating revenue as defined in paragraph (4) of subdivision (a).

(2) The quality improvement fee shall be deposited in the General Fund.

(3) If the Medi-Cal managed care plan does not timely pay the quality improvement fee, or any part thereof, the department may offset the amount of the fee that is unpaid against any amounts due from the state to the Medi-Cal managed care plan. Notwithstanding any such offset, the methodology for determining the fee as set forth in this subdivision shall be followed.

(4) The department shall make retrospective adjustments as necessary to the amounts calculated pursuant to this subdivision in order to assure that the Medi-Cal managed care plan's aggregate quality improvement fee for any particular state fiscal year does not exceed 6 percent of the total operating revenue for the Medi-Cal managed care plan for that year.

(5) If, on account of delay in the adoption of the annual Budget Act, or for any other reason, a Medi-Cal managed care plan is not paid by the department for a period in excess of 30 days, the payment date for the fee specified in paragraph (1) shall be extended until 45 days following the date that regular payments are resumed to the plans.

(6) On or before August 31 of each year, each Medi-Cal managed care plan subject to the quality improvement fee shall report to the department, in a prescribed form, the plan's total operating revenue as defined in paragraph (4) of subdivision (a) for the preceding state fiscal year.

(7) Any fee imposed pursuant to this section shall not be considered to be an administrative cost for purposes of Section 1378 of the Health and Safety Code, Section 14087.101, 14087.103, or 14087.105, or any regulation adopted pursuant to those sections.

(c) (1) The department shall implement this section in a manner that complies with federal requirements. If the department is unable to comply with the federal requirements for federal matching funds under this section, the quality improvement fee shall not be assessed or collected.

(2) The director may alter the methodology specified in this section for calculating the quality improvement fee to the extent necessary to meet the requirement of federal law or regulations.

(3) If, after implementation of this section, federal disapproval of the quality improvement fee program as described in this section occurs, any fees paid by the plans to the department in any period for which such disapproval is effective shall be refunded to the plans.

(d) In addition to the Medi-Cal capitation rates that a Medi-Cal managed care plan would otherwise receive for providing services to

Medi-cal beneficiaries, the capitation rates shall be increased in an amount determined by the department, subject to the following requirements:

(1) The additional Medi-Cal reimbursement provided by this section shall be distributed under a capitation payment methodology or on any other federally permissible basis.

(2) The additional Medi-Cal reimbursement provided by this section shall not supplant the payments otherwise due to any Medi-Cal managed care plan in the absence of such an additional reimbursement.

(3) Additional reimbursement provided by this section to any particular Medi-Cal managed care plan shall not cause the total reimbursement paid to that plan to exceed any applicable limit on payments as established pursuant to federal law and regulations.

(e) The director, or his or her designee, shall administer this section.

(f) The director may adopt regulations as are necessary to implement this section. These regulations shall be adopted as emergency regulations in accordance with the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code). For purposes of this section, the adoption of regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, and safety or general welfare. The regulations shall include, but not be limited to, any regulations necessary for either of the following purposes:

(1) The administration of this section, including the proper imposition and collection of the quality improvement fees.

(2) The development of any forms necessary to calculate, notify, collect, and distribute the quality improvement fees.

(g) As an alternative to subdivision (f), and notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the director may implement this section by means of a provider bulletin, contract amendment, policy letter, or other similar instructions, without taking regulatory action.

(h) To the extent permitted by federal law, any limitation on rates to the Medi-Cal managed care plan based on Medi-Cal fee-for-service costs shall be increased to include any capitation rate increase related to the quality improvement fee in subdivision (b).

(i) This section shall become inoperative on January 1, 2009, and, as of July 1, 2009, is repealed, unless a later enacted statute, that becomes effective on or before July 1, 2009, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 26.1. Section 14552.5 is added to the Welfare and Institutions Code, to read:

14552.5. Pursuant to Section 14043.46, the department may implement a one-year moratorium on the certification and enrollment into the Medi-Cal program of new adult day health care centers.

SEC. 26.2. Section 14574 of the Welfare and Institutions Code is amended to read:

14574. (a) The director shall terminate the Medi-Cal certification of any adult day health care provider at any time if he or she finds the provider is not in compliance with standards prescribed by this chapter or Chapter 7 (commencing with Section 14000) or regulations adopted pursuant to these chapters. The director shall give reasonable notice of his or her intention to terminate the certification to the provider and participants in the center. The notice shall state the effective date of, and the reason for, the termination.

(b) The denial, suspension, or termination of certification shall be considered grounds for denial, suspension, or revocation of the license.

(c) The California Department of Aging and the department shall coordinate proceedings to deny an application for certification, to terminate or suspend certification, or to revoke or suspend licensure to the extent appropriate to ensure consistency and uniformity.

(d) The provider shall have the right to appeal the department's decision made pursuant to Section 14123.

(e) This section is not applicable to denials of initial certification made pursuant to a moratorium imposed in accordance with Section 14043.46 of the Welfare and Institutions Code.

SEC. 27. Section 16809 of the Welfare and Institutions Code, as amended by Section 75 of Chapter 230 of the Statutes of 2003, is amended to read:

16809. (a) (1) The board of supervisors of a county that contracted with the department pursuant to Section 16709 during the 1990–91 fiscal year and any county with a population under 300,000, as determined in accordance with the 1990 decennial census, by adopting a resolution to that effect, may elect to participate in the County Medical Services Program. The County Medical Services Program shall have responsibilities for specified health services to county residents certified eligible for those services by the county.

(2) If the County Medical Services Program Governing Board contracts with the department to administer the County Medical Services Program, that contract shall include, but need not be limited to, all of the following:

(A) Provisions for the payment to participating counties for making eligibility determinations based on the formula used by the County Medical Services Program for the 1993–94 fiscal year.

(B) Provisions for payment of expenses of the County Medical Services Program Governing Board.

(C) Provisions relating to the flow of funds from counties' vehicle license fees, sales taxes, and participation fees and the procedures to be followed if a county does not pay those funds to the program.

(D) Those provisions, as applicable, contained in the 1993–94 fiscal year contract with counties under the County Medical Services Program.

(3) The contract between the department and the County Medical Services Program Governing Board shall require that the County Medical Services Program Governing Board shall reimburse three million five hundred thousand dollars ($3,500,000) for the state costs of providing administrative support to the County Medical Services Program. The department may decline to implement decisions made by the governing board that would require a greater level of administrative support than that for the 1993–94 fiscal year. The department may implement decisions upon compensation by the governing board to cover that increased level of support.

(4) The contract between the department and the County Medical Services Program Governing Board may include provisions for the administration of a pharmacy benefit program and, pursuant to these provisions, the department may negotiate, on behalf of the County Medical Services Program, rebates from manufacturers that agree to participate. The governing board shall reimburse the department for staff costs associated with this paragraph.

(5) The department shall administer the County Medical Services Program pursuant to the provisions of the 1993–94 fiscal year contract with the counties and regulations relating to the administration of the program until the County Medical Services Program Governing Board executes a contract for the administration of the County Medical Services Program and adopts regulations for that purpose.

(6) The department shall not be liable for any costs related to decisions of the County Medical Services Program Governing Board that are in excess of those set forth in the contract between the department and the County Medical Services Program Governing Board.

(b) Each county intending to participate in the County Medical Services Program pursuant to this section shall submit to the Governing Board of the County Medical Services Program a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year in which the county will participate in the County Medical Services Program.

(c) A county participating in the County Medical Services Program pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) (1) The County Medical Services Program Account is established in the County Health Services Fund. The County Medical Services Program Account is continuously appropriated,

notwithstanding Section 13340 of the Government Code, without regard to fiscal years. The following amounts may be deposited in the account:

(A) Any interest earned upon money deposited in the account.

(B) Moneys provided by participating counties or appropriated by the Legislature to the account.

(C) Moneys loaned pursuant to subdivision (q).

(2) The methods and procedures used to deposit funds into the account shall be consistent with the methods used by the program during the 1993–94 fiscal year.

(e) Moneys in the program account shall be used by the department, pursuant to its contract with the County Medical Services Program Governing Board, to pay for health care services provided to the persons meeting the eligibility criteria established pursuant to subdivision (j) and to pay for the expense of the governing board as set forth in the contract between the board and the department. In addition, moneys in this account may be used to reimburse the department for state costs pursuant to paragraph (3) of subdivision (a).

(f) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, at the end of the 1982–83 fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code.

(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, County Medical Services Program Governing Board expenses, or for expenditures to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) A separate County Medical Services Program Reserve Account is established in the County Health Services Fund. Six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the budget for health services for all counties electing to participate in the County Medical Services Program under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits,

or eligibility criteria pursuant to subdivision (j) or for reducing the participation fees as determined by the County Medical Services Program Governing Board pursuant to subdivision (i). Nothing in this section shall preclude the CMSP Governing Board from establishing other reserves.

(h) Moneys in the program account and the reserve account, except for moneys provided by the state in excess of the amount required to fund the state risk specified in subdivision (j), and any funds loaned pursuant to subdivision (q) shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) (1) Counties shall pay participation fees as established by the County Medical Services Program Governing Board and their jurisdictional risk amount in a method that is consistent with that established in the 1993–94 fiscal year.

(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the CMSP Governing Board.

(3) Payments made pursuant to this subdivision shall be deposited in the program account.

(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.

(j) (1) (A) For the 1991–92 fiscal year and all preceding fiscal years, the state shall be at risk for any costs in excess of the amounts deposited in the reserve fund.

(B) (i) Beginning in the 1992–93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other sources. The state shall be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 1999–2000, 2000–01, 2001–02, 2002–03, 2003–04, and 2004–05 fiscal years. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus the additional cost increases in excess of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 1999–2000, 2000–01, 2001–02, 2002–03, 2003–04, and 2004–05 fiscal years. In the 1994–95 fiscal year, the amount of the state risk shall be twenty million two hundred thirty-seven

thousand four hundred sixty dollars ($20,237,460) per fiscal year, in addition to the cost of administrative support pursuant to paragraph (3) of subdivision (a).

(ii) For the 1999–2000, 2000–01, 2001–02, 2002–03, 2003–04, and 2004–05 fiscal years, the state shall not be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600, according to the table specified in paragraph (2), to the County Medical Services Program, plus any additional cost increases for the 1999–2000, 2000–01, 2001–02, 2002–03, 2003–04, and 2004–05 fiscal years.

(C) The CMSP Governing Board, after consultation with the department, shall establish uniform eligibility criteria and benefits for the County Medical Services Program.

(2) For the 1991–92 fiscal year, jurisdictional risk limitations shall be as follows:

Jurisdiction	Amount
Alpine	$ 13,150
Amador	620,264
Butte	5,950,593
Calaveras	913,959
Colusa	799,988
Del Norte	781,358
El Dorado	3,535,288
Glenn	787,933
Humboldt	6,883,182
Imperial	6,394,422
Inyo	1,100,257
Kings	2,832,833
Lassen	687,113
Madera	2,882,147
Marin	7,725,909
Mariposa	435,062
Modoc	469,034
Mono	369,309
Napa	3,062,967
Nevada	1,860,793
Plumas	905,192
San Benito	1,086,011
Shasta	5,361,013
Sierra	135,888

Siskiyou	1,372,034
Solano	6,871,127
Sonoma	13,183,359
Sutter	2,996,118
Tehama	1,912,299
Trinity	611,497
Tuolumne	1,455,320
Yuba	2,395,580

(3) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall be the amount specified in paragraph (A) plus the amount determined pursuant to paragraph (B), minus the amount specified by the County Medical Services Program Governing Board as participation fees.

(A)

Jurisdiction	Amount
Lake	$1,022,963
Mendocino	1,654,999
Merced	2,033,729
Placer	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the CMSP Governing Board before a county is permitted to participate in the County Medical Services Program.

(4) For the 1994–95 and 1995–96 fiscal years, the specific amounts and method of apportioning risk to each participating county may be adjusted by the CMSP Governing Board.

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code. Contracts of the department pursuant to this section shall have no force or effect unless they are approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) Third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3 may be pursued.

(n) Under the program provided for in this section, the department may reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if the California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

(o) Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(p) Participating counties may conduct an independent program review to identify ways through which program savings may be generated. The counties and the department may collectively pursue identified options for the realization of program savings.

(q) The Department of Finance may authorize a loan of up to thirty million dollars ($30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section.

(r) Regulations adopted by the department pursuant to this section shall remain operative and shall be used to operate the County Medical Services Program until a contract with the County Medical Services Program Governing Board is executed and regulations, as appropriate, are adopted by the County Medical Services Program Governing Board. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, those regulations adopted under the County Medical Services Program shall become inoperative until January 1, 1998, except those regulations that the department, in consultation with the County Medical Services Program Governing Board, determines are needed to continue to administer the County Medical Services Program. The department shall notify the Office of Administrative Law as to those regulations the department will continue to use in the implementation of the County Medical Services Program.

(s) Moneys appropriated from the General Fund to meet the state risk as set forth in subparagraph (B) of paragraph (1) of subdivision (j) shall

not be available for those counties electing to disenroll from the County Medical Services Program.

(t) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted on or before January 1, 2008, deletes or extends that date.

SEC. 28. Section 16809 of the Welfare and Institutions Code, as amended by Section 91 of Chapter 1161 of the Statutes of 2002, is amended to read:

16809. (a) The board of supervisors of a county that contracted with the department pursuant to Section 16709 during the 1990–91 fiscal year and any county with a population under 300,000, as determined in accordance with the 1990 decennial census, may enter into a contract with the department and the department may enter into a contract with that county under which the department agrees to administer the program responsibilities for specified health services to county residents certified eligible for those services by the county.

(b) Each county intending to contract with the department pursuant to this section shall submit to the department a notice of intent to contract adopted by the board of supervisors no later than April 1 of the fiscal year preceding the fiscal year for which the agreement will be in effect in accordance with procedures established by the department.

(c) A county contracting with the department pursuant to this section shall not be relieved of its indigent health care obligation under Section 17000.

(d) The department shall establish the County Medical Services Program Account in the County Health Services Fund. The County Medical Services Program Account is continuously appropriated, notwithstanding Section 13340 of the Government Code, without regard to fiscal years. The following amounts may be deposited in the account:

(1) Any interest earned upon money deposited in the account.

(2) Moneys provided by participating counties or appropriated by the Legislature to the account.

(3) Moneys loaned pursuant to subdivision (q).

(e) Moneys in the program account shall be used by the department to pay for health care services provided to the persons meeting the eligibility criteria established pursuant to subdivision (j).

(f) (1) Moneys in this account shall be administered on an accrual basis and notwithstanding any other provision of law, except as provided in this section, shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code.

(2) (A) All interest or other increment resulting from the investment shall be deposited in the program account, at the end of the 1982–83

fiscal year and every six months thereafter, notwithstanding Section 16305.7 of the Government Code.

(B) All interest deposited pursuant to subparagraph (A) shall be available to reimburse program-covered services, or for expenditures to augment the program's rates, benefits, or eligibility criteria pursuant to subdivision (j).

(g) The department shall establish a separate County Medical Services Program Reserve Account in the County Health Services Fund. Six months after the end of each fiscal year, any projected savings in the program account shall be transferred to the reserve account, with final settlement occurring no more than 12 months later. Moneys in this account shall be utilized when expenditures for health services made pursuant to subdivision (j) for a fiscal year exceed the amount of funds available in the program account for that fiscal year. When funds in the reserve account are estimated to exceed 10 percent of the budget for health services for all counties electing to contract with the department under this section for the fiscal year, the additional funds shall be available for expenditure to augment the rates, benefits, or eligibility criteria pursuant to subdivision (j) or for reducing the participation fees required by Section 16809.3.

(h) Moneys in the program account and the reserve account, except for moneys provided by the state in excess of the amount required to fund the state risk specified in subdivision (j), and any funds loaned pursuant to subdivision (q), shall not be transferred to any other fund or account in the State Treasury except for purposes of investment as provided in Article 4 (commencing with Section 16470) of Chapter 3 of Part 2 of Division 4 of Title 2 of the Government Code. All interest or other increment resulting from investment shall be deposited in the program account, notwithstanding Section 16705.7 of the Government Code.

(i) (1) Counties shall pay by the 15th of each month the agreed-upon contract amount. In the event a county does not make the agreed-upon monthly payment, the department may terminate the county's participation in the program.

(2) A county may request, due to financial hardship, the payments under paragraph (1) be delayed. The request shall be subject to approval by the Small County Advisory Committee.

(3) Payments made pursuant to this subdivision shall be deposited in the program account.

(4) Payments may be made as part of the deposits authorized by the county pursuant to Sections 17603.05 and 17604.05.

(j) (1) (A) For the 1991–92 fiscal year and all preceding fiscal years, the state shall be at risk for any costs in excess of the amounts deposited in the reserve fund.

(B) Beginning in the 1992–93 fiscal year and for each fiscal year thereafter, counties and the state shall share the risk for cost increases of the County Medical Services Program not funded through other sources. The state shall be at risk for any cost that exceeds the cumulative annual growth in dedicated sales tax and vehicle license fee revenue, up to the amount of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year, except for the 1999–2000, 2000–01, 2001–02, 2002–03, 2003–04, and 2004–05 fiscal years. Counties shall be at risk up to the cumulative annual growth in the Local Revenue Fund created by Section 17600 according to the table specified in paragraph (2) to the County Medical Services Program, plus additional cost increases in excess of twenty million two hundred thirty-seven thousand four hundred sixty dollars ($20,237,460) per fiscal year.

(C) As a condition of the state assuming this risk, the department may require uniform eligibility criteria and benefits to be provided which shall be mutually established by participating counties in conjunction with the department. The County Medical Services Program Governing Board may revise these eligibility criteria and benefits or alter rates of payment in order to assure that expenditures do not exceed the funds available in the program account.

(2) For the 1991–92 fiscal year, jurisdictional risk limitations shall be as follows:

Jurisdiction	Amount
Alpine	$ 13,150
Amador	620,264
Butte	5,950,593
Calaveras	913,959
Colusa	799,988
Del Norte	781,358
El Dorado	3,535,288
Glenn	787,933
Humboldt	6,883,182
Imperial	6,394,422
Inyo	1,100,257
Kings	2,832,833
Lassen	687,113
Madera	2,882,147
Marin	7,725,909
Mariposa	435,062
Modoc	469,034

Mono	369,309
Napa	3,062,967
Nevada	1,860,793
Plumas	905,192
San Benito	1,086,011
Shasta	5,361,013
Sierra	135,888
Siskiyou	1,372,034
Solano	6,871,127
Sonoma	13,183,359
Sutter	2,996,118
Tehama	1,912,299
Trinity	611,497
Tuolumne	1,455,320
Yuba	2,395,580

(3) Beginning in the 1991–92 fiscal year and in subsequent fiscal years, the jurisdictional risk limitation for the counties that did not contract with the department pursuant to Section 16709 during the 1990–91 fiscal year shall be the amount specified in paragraph (A) plus the amount determined pursuant to paragraph (B), minus the amount specified in Section 16809.3.

(A)

Jurisdiction	Amount
Lake	1,022,963
Mendocino	1,654,999
Merced	2,033,729
Placer	1,338,330
San Luis Obispo	2,000,491
Santa Cruz	3,037,783
Yolo	1,475,620

(B) The amount of funds necessary to fully fund the anticipated costs for the county shall be determined by the department. This amount shall be subject to the approval of both the Department of Finance and the Small County Advisory Committee before a county is permitted to contract back with the department.

(4) For the 1992–93 fiscal year and fiscal years thereafter, the amounts of the jurisdictional risk limitations shall be adjusted according to the provisions of paragraph (2).

(k) The Legislature hereby determines that an expedited contract process for contracts under this section is necessary. Contracts under this section shall be exempt from the provisions of Chapter 2 (commencing with Section 10290) of Part 2 of Division 2 of the Public Contract Code. Contracts shall have no force and effect unless approved by the Department of Finance.

(*l*) The state shall not incur any liability except as specified in this section.

(m) The department may pursue third-party recoveries for services provided under this section pursuant to Article 3.5 (commencing with Section 14124.70) of Chapter 7 of Part 3.

(n) Under the program provided for in this section, the department shall reimburse hospitals for inpatient services at the rates negotiated for the Medi-Cal program by the California Medical Assistance Commission, pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3, if the California Medical Assistance Commission determines that reimbursement to the hospital at the contracted rate will not have a detrimental fiscal impact on either the Medi-Cal program or the program provided for in this section. In negotiating and renegotiating contracts with hospitals, the commission may seek terms which allow reimbursement for patients receiving services under this section at contracted Medi-Cal rates.

(o) Any hospital which has a contract with the state for inpatient services under the Medi-Cal program and which has been approved by the commission to be reimbursed for patients receiving services under this section shall not deny services to these patients.

(p) Participating counties may conduct an independent program review to identify ways through which program savings may be generated. The counties and the department shall collectively pursue identified options for the realization of program savings.

(q) The Department of Finance may authorize a loan of up to thirty million dollars ($30,000,000) for deposit into the program account to ensure that there are sufficient funds available to reimburse providers and counties pursuant to this section.

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

SEC. 29. Section 22003 of the Welfare and Institutions Code is amended to read:

22003. (a) Individuals who participate in the program and have resources above the eligibility levels for receipt of medical assistance under Title XIX of the Social Security Act (Subchapter XIX (commencing with Section 1396) of Chapter 7 of Title 42 of the United States Code) shall be eligible to receive those in-home supportive services benefits specified by the State Department of Social Services, and those Medi-Cal benefits specified by the State Department of Health

Services, for which they would otherwise be eligible, if, prior to becoming eligible for benefits, they have purchased a long-term care insurance policy or a health care service plan contract covering long-term care that has been certified by the State Department of Health Services pursuant to this division.

(b) Individuals may purchase approved and certified long-term care insurance policies or health care service plan contracts which cover long-term care services in amounts equal to the resources they wish to protect, so long as the amount of insurance purchased exceeds the minimum level set by the State Department of Health Services pursuant to Section 22009.

(c) The resource protection provided by this division shall be effective only for long-term care policies, and health care service plan contracts that cover long-term care services, when the policy or contract is delivered, issued for delivery, or renewed on July 1, 1993 and thereafter.

SEC. 30. Section 22005.2 is added to the Welfare and Institutions Code, to read:

22005.2. Each organization issuing policies certified by the State Department of Health Services under this division shall each year contribute to a fund to be used for common educational and marketing expenses for reaching the target population designated by the California Partnership for Long-Term Care. The amount of each participating issuer's required annual contribution shall be determined by the department and shall not be less than twenty thousand dollars ($20,000).

SEC. 31. Section 22009 of the Welfare and Institutions Code is amended to read:

22009. (a) The State Department of Health Services shall adopt regulations to implement this division, including, but not limited to, regulations which establish:

(1) The population and age groups that are eligible to participate in the program.

(2) The minimum level of long-term care insurance or long-term care coverage included in health care service plan contracts that must be purchased to meet the requirement of subdivision (b) of Section 22003.

(3) The amount and types of services that a long-term care insurance policy or health care service plan contract which includes long-term care services must cover to meet the requirements of this division.

(4) Which coordinating entities are designated and approved to deliver individual assessment and case management services to individuals in a community setting, as required by subdivision (b) of Section 22006.

(5) The disability criteria for eligibility for long-term care benefits as required by subdivision (c) of Section 22006.

(6) The specific eligibility requirements for receipt of the Medi-Cal benefits provided for by the program, and those Medi-Cal benefits for which participants in the program shall be eligible.

(b) The State Department of Social Services shall also adopt regulations to implement this division, including, but not limited to, regulations that establish:

(1) The specific eligibility requirements for in-home supportive services benefits.

(2) Those in-home supportive services benefits for which participants in the program shall be eligible.

(c) The State Department of Health Services and the State Department of Social Services shall also jointly adopt regulations that provide for the following:

(1) Continuation of benefits pursuant to Section 22008.5.

(2) The protection of a participant's resources pursuant to Section 22004, and the ratio of resources to long-term care benefit payments as described in subdivision (c) of Section 22004.

(d) The departments shall adopt emergency regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code to implement this division. The adoption of regulations pursuant to this section in order to implement this division shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, or safety.

Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, emergency regulations adopted pursuant to this section shall not be subject to the review and approval of the Office of Administrative Law. The regulations shall become effective immediately upon filing with the Secretary of State. The regulations shall not remain in effect more than 120 days unless the adopting agency complies with all of the provisions of Chapter 3.5 (commencing with Section 11340) as required by subdivision (c) of Section 11346.1 of the Government Code.

SEC. 31.5. Section 80.5 of Chapter 230 of the Statutes of 2003 is repealed.

SEC. 32. (a) The Legislature finds and declares that the state faces a fiscal crisis that requires unprecedented measures to be taken to reduce General Fund expenditures.

(b) (1) Notwithstanding any other provision of law, for acute care hospitals not under contract with the State Department of Health Services, the amount for inpatient services provided to Medi-Cal recipients during the 2004–05 fiscal year shall not exceed the amount determined pursuant to paragraph (3).

(2) For purposes of this subdivision, the reimbursement for inpatient services includes the amounts paid for all categories of inpatient services

allowable by Medi-Cal. The reimbursement includes the amounts paid for routine services, together with all related ancillary services.

(3) (A) The maximum payment for services provided during the 2004–05 fiscal year shall be calculated using the ''as audited'' cost per day, including ancillary costs, for the hospital's fiscal period ending in the 2003 calendar year.

(B) When calculating a hospital's cost report settlement for a hospital's fiscal period ending in the 2004–05 fiscal year that is subject to paragraph (1), the settlement shall be limited to the lower of either the hospital's cost per day for inpatient services provided during the 2004–05 fiscal year or the ''as audited'' cost per day for the hospital's fiscal period ending in the 2003 calendar year multiplied by the number of inpatient days rendered during the 2004–05 fiscal year.

(c) Notwithstanding any other provision of law, for acute care hospitals not under contract with the State Department of Health Services pursuant to Article 2.6 (commencing with Section 14081) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code, the amounts paid for inpatient hospital services provided during the 2004–05 fiscal year as interim payments shall be reduced by 10 percent with respect to the interim rate on file and in effect on January 1, 2004, as established pursuant to Section 51536 of Title 22 of the California Code of Regulations. The room rates on file for purposes of Section 51536 of Title 22 of the California Code of Regulations on January 1, 2004, shall be used for the period of July 1, 2004, through June 30, 2005, and requests for room rate increases shall not be processed. This section shall not affect the final settlement process or amounts as determined pursuant to subdivision (b) or Section 51536 of Title 22 of the California Code of Regulations.

(d) It is the intent of the Legislature that the California Medical Assistance Commission freeze all Medi-Cal reimbursement rates paid to hospitals for inpatient services at their 2003–04 contract rate, or at a lower level, whichever is applicable based on contract negotiations.

(e) Notwithstanding the rulemaking provisions of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the Director of Health Services may implement subdivision (b) by means of a provider bulletin, or similar instruction, without taking regulatory action.

(f) The Director of Health Services shall promptly seek all necessary federal approvals in order to implement this section, including necessary amendments to the state plan.

(g) Implementation of Section 14105.18 of the Welfare and Institutions Code shall be based on the rates of payment pursuant to the Medi-Cal program excluding the reduction in interim payments required by subdivision (c).

SEC. 33. In response to a report of the United States Department of Justice, Civil Rights Division, pursuant to the Civil Rights of Institutionalized Persons Act (42 U.S.C. Sec. 1997 and following), regarding the operation of the Metropolitan State Hospital, the State Department of Mental Health shall do all of the following with respect to the Metropolitan State Hospital:

(a) Commencing July 15, 2004, report to the appropriate fiscal and policy committees of the Legislature on a quarterly basis regarding key measures that pertain to patient care and the operation of the Metropolitan State Hospital. These key measures shall, at a minimum, include all of the following:

(1) Rate of readmission to an inpatient facility that occurs within 30 days of a previous discharge from the Metropolitan State Hospital.

(2) Number of patient injury events per patient day.

(3) Number of elopements per inpatient day.

(4) Ratio of the number of medication errors reported to the duplicated count of clients served during the reporting period.

(5) Proportion of patients receiving scheduled antipsychotic medications that receive new generation agents.

(6) Data regarding seclusion and restraint use, including hours of restraint as a percent of inpatient hours, percent of clients restrained at least once during the reporting period, hours of seclusion as a percent of inpatient hours, and percent of patients secluded at least once during the reporting period.

(b) Commencing July 15, 2004, provide to the appropriate fiscal and policy committees of the Legislature all of the following:

(1) All future correspondence between the United States Department of Justice and the State Department of Mental Health regarding Metropolitan State Hospital.

(2) Quarterly updates of the Metropolitan State Hospital ''Summary Grid'' for compliance.

(c) Convene at least two community forums within the 2004–05 fiscal year at the Metropolitan State Hospital to provide a discussion opportunity with individuals regarding the work in progress for meeting the requirements of the United States Department of Justice. These forums shall provide the opportunity to tour programs at the facility as appropriate on those days the forums are convened, or at other times as arranged by the facility within a timely manner.

SEC. 34. The State Department of Mental Health, in collaboration with the Department of Managed Health Care, the Department of Insurance, and applicable representatives from the California public and private mental health systems, shall identify the core reasons that mental health parity in California is not being achieved, the barriers to achieving that parity, and what approaches over the short-term and long-term can

be done to effectuate a more comprehensive mental health system in California, both public and private. The State Department of Mental Health shall submit a report of this information to the appropriate policy committees of the Legislature on or before March 1, 2005.

SEC. 35. It is the intent of the Legislature that retroactive payments owed to Federally Qualified Health Centers and Rural Health Centers for the period that began January 1, 2001, and proceeds through June 30, 2004, shall be made in the 2004–05 fiscal year.

SEC. 36. The State Department of Health Services, in collaboration with the County Welfare Directors Association, shall develop options and recommendations for modifying the budgeting and allocation methodologies for county Medi-Cal administration. The recommendations shall, at a minimum, consider the number of eligible cases, the complexity of cases, the way in which caseload growth funds are allocated, and the workload associated with denied applications. The department shall consider options for the establishment of productivity features that result in efficient and effective administration of the Medi-Cal program, including accurate and timely determinations of eligibility and redeterminations and reasonable access to eligibility services for potential eligibles. The department shall report the options and recommendations developed pursuant to this section to all fiscal committees of both houses of the Legislature on or before January 10, 2005.

SEC. 36.5. The State Department of Developmental Services shall develop a methodology for apportioning the 2004-05 unallocated reduction from the General Fund of seven million dollars ($7,000,000) to the regional center purchase-of-service budget and shall provide this information to the fiscal and applicable policy committees of both houses of the Legislature on or before December 1, 2004. The department shall also provide a summary of the approved components of the regional center plans to meet the unallocated amount as required in Section 4631.5 of the Welfare and Institutions Code.

SEC. 37. 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. amount as required in Section 4631.5 of the Welfare and Institutions Code.

SEC. 38. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2004 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 229

An act to amend Section 8263 of, to add Section 8263.4 to, and to add Article 16.5 (commencing with Section 8385) to Chapter 2 of Part 6 of, the Education Code, to amend Section 11796 of the Government Code, to amend Sections 1522, 1523.1, 1523.2, 1568.05, 1569.185, 1596.803, 1596.816, 1596.871, 1596.872a, 1596.872b, and 11970.2 of, and to add Section 128241 to, the Health and Safety Code, to amend Section 273d of the Penal Code, to amend Section 1611.5 of the Unemployment Insurance Code, and to amend Sections 10531, 10532, 11320.1, 11322.8, 11322.9, 11325.21, 11325.22, 11325.23, 11325.7, 11326, 11403.1, 11403.3, 11453, 11454, 11454.5, 11454.6, 11462, 11462.06, 11466.21, 12201, 12300, 12301.1, 14132.95, 15204.2, 17021, 18939, and 19806 of, to amend and renumber Section 10553.2 of, to add Sections 9404, 11401.5, 11486.3, 12301.21, 12305.7, 12305.71, 12305.72, 12305.8, 12305.81, 12305.82, 12305.83, 12317, 12317.1, 12317.2, 14132.951, and 16521.3 to, to repeal and add Section 12301.2 of, and to repeal Chapter 2.4 (commencing with Section 16145) of Part 4 of Division 9 of, the Welfare and Institutions Code, relating to human services, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 8263 of the Education Code is amended to read:

8263. (a) The Superintendent 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) (A) First priority shall be given to neglected or abused children who are recipients of child protective services, or children 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.

(B) A family who is receiving child care on the basis of a child being at risk of abuse, neglect, or exploitation, as defined in subdivision (k) of Section 8208, is eligible to receive services pursuant to subparagraph (A) for up to three months, unless the family becomes eligible pursuant to subparagraph (C).

(C) A family may receive child care services for up to 12 months on the basis of a certification by the county child welfare agency that child care services continue to be necessary or, if the child is receiving child protection services during that period of time, and the family requires child care and remains otherwise eligible. This time limit does not apply if the family's child care referral is recertified by the county child welfare agency.

(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. If 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 exceptional 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. A standard, rule, or regulation shall not 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, if 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 the child is not suffering from that contagious or infectious disease.

(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) (1) The Superintendent shall establish a fee schedule for families utilizing child care and development services pursuant to this chapter, including families receiving services under paragraph (1) of subdivision (b). Families receiving services under subparagraph (B) of paragraph (1) of subdivision (b) may be exempt from these fees for up to three months. Families receiving services under subparagraph (C) of paragraph (1) of subdivision (b) may be exempt from these fees for up to 12 months. The cumulative period of time of exemption from these fees for families receiving services under paragraph (1) of subdivision (b) shall not exceed 12 months.

(2) 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.

(g) The family 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.

(h) 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.

(i) 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.

(j) 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. 1.2. Section 8263.4 is added to the Education Code, to read:

8263.4. (a) The preferred placement for children who are 11 or 12 years of age and who are otherwise eligible for subsidized child care services shall be in an after school program.

(b) Children who are 11 or 12 years of age and who are enrolled in an after school program are not eligible for other subsidized child care services if, and to the extent that, the after school program meets the child care needs of the family. The child care needs of the family shall be considered to be met when a parent certifies in writing that the after school program meets the child care needs of the family.

(c) Unless the conditions in subdivision (b) are met, children who are eligible for and who are receiving subsidized child care services shall continue to receive subsidized child care services.

(d) If a child who becomes ineligible for subsidized child care under subdivision (b) is disenrolled from an after school program, or if the after school program no longer meets the child care needs of the family, the child shall be able to receive subsidized child care.

(e) This section does not apply to a child with exceptional needs who has an individual education plan as required by the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. Sec. 794), or Part 30

(commencing with Section 56000), and who has a demonstrated need for child care.

(f) For purposes of this section, ''after school program'' means a program provided pursuant to Article 22.5 (commencing with Section 8482) and Article 22.6 (commencing with Section 8484.7) of Chapter 2 of Part 6.

SEC. 1.3. Article 16.5 (commencing with Section 8385) is added to Chapter 2 of Part 6 of the Education Code, to read:

Article 16.5. Fraud And Overpayments

8385. (a) (1) The department, in consultation with the State Department of Social Services, county fraud investigators, and other fraud investigation experts, shall perform an error rate study to estimate the percentage of errors, including, but not limited to, overpayments and fraud, in determinations of eligibility, the need for child care pursuant to paragraph (2) of subdivision (a) of Section 8263, family fees, and reimbursement payments to child care providers, including, but not limited to, authorized hours of care and the use of adjustment factors, in programs operated pursuant to Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350). The study shall include, but not be limited to, an analysis of a statistically valid, random, sample of family files and reimbursement payments that have been processed over a specified time. Each payment from the sample shall be audited to determine whether it was correctly paid or paid in error. Those payments identified as being paid in error shall be classified based on the type of the error that occurred, including, but not limited to, administrative errors, overpayment caused by providers, overpayments caused by parents, provider fraud, and beneficiary fraud.

(2) In conducting the compliance reviews required by regulations of the Superintendent pursuant to Section 8261 for programs operated pursuant to Article 8 (commencing with Section 8240), the department shall survey a statistically valid sample of files for the program and identify and report the errors, by category, resulting from that survey.

(3) The department shall report in writing to the Governor, the Chair of the Joint Legislative Budget Committee, the chairs of the fiscal committees for both houses of the Legislature, and the Department of Finance, information regarding the error rate study by April 1, 2005. The report shall include, but not be limited to, all of the following:

(A) The results of the error rate study.

(B) Fraud and overpayment reduction targets that have been established based on the data from the error rate study.

(C) The timeframe for achieving the targets.

(D) Recommendations developed pursuant to subdivision (b).

(b) The department shall develop recommendations for the prevention and elimination of child care fraud and programmatic errors and the identification and collection of child care overpayments. The recommendations shall include, but not be limited to:

(1) Precise definitions of what constitutes child care fraud and overpayments.

(2) A consistent statewide system to identify fraud and overpayments.

(3) A consistent statewide system of standards for fraud prevention, intervention, and overpayment collection that is applied to all child care program provider categories.

(4) Statewide fraud and overpayment measures that will be reported annually by the department.

(5) Standards for independent financial compliance audits, including provisions to ensure that small programs are not unduly burdened.

(6) Consistent statewide mechanisms for due process for parents.

(7) Consistent statewide mechanisms for dispute resolution for child care programs and providers.

(8) Assessment of the cost-effectiveness of prevention and intervention activities.

(9) Equitable treatment of all consumers of subsidized child care.

(10) Consideration of the need to minimize new barriers to family access to child care.

(11) A survey of best practices from both California agencies and providers and from other states.

(c) In developing its recommendations, the department shall place priority on prevention of fraud and overpayments, and shall consider existing best practices for doing so. The department shall make any identified best practices available on its Web site by March 1, 2005.

(d) The department shall consult with representatives of the State Department of Social Services, the Legislative Analyst's Office, the Department of Finance, staff from the appropriate policy and fiscal committees of each house of the Legislature, and other interested parties including, but not limited to, child care consumers and providers, representatives from county welfare departments, district attorneys, county special investigative units, and legal advocacy organizations representing consumers in developing these recommendations.

(e) The department shall report its recommendations directly to the respective policy and fiscal committees of the Legislature by April 1, 2005.

(f) On or after July 1, 2005, all child care contracts entered into by the State Department of Education for means-tested child care programs, including, but not limited to, the programs described in Article 3 (commencing with Section 8220), Article 8 (commencing with Section

8240), and Article 15.5 (commencing with Section 8350), shall require implementation of best practices identified pursuant to subdivision (c).

SEC. 1.5. Section 11796 of the Government Code is amended to read:

11796. (a) There is in the California Health and Human Services Agency the California Health and Human Services Agency Data Center.

(b) The data center shall be under the supervision of a data center director who shall be appointed by the Secretary of the California Health and Human Services Agency pursuant to civil service. The data center director shall be responsible for the efficient and effective management and operation of the data center.

(c) (1) The Legislature finds and declares that the name of the Health and Welfare Agency Data Center was changed to the California Health and Human Services Agency Data Center by Chapter 873 of the Statutes of 1999, effective January 1, 2000. The Legislature further finds and declares that this change of name was and is not intended to alter or modify any power, right, obligation, or duty of the data center that is found in statute, regulation, or contract.

(2) Any reference in statute, regulation, or contract to the Health and Welfare Agency Data Center shall be deemed to refer to the California Health and Human Services Agency Data Center.

(d) Beginning with the 2005–06 fiscal year, and each fiscal year thereafter, by August 1, the data center shall submit a proposal to the Department of Finance that reconciles the current year's rates, and details any adjustments proposed for budget year rates to be included in the Governor's Budget.

SEC. 2. Section 1522 of the Health and Safety Code is amended to read:

1522. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a community care facility, foster family home, or a certified family home of a licensed foster family agency. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as identified in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with community care clients may pose a risk to the clients' health and safety.

(a) (1) Before issuing a license or special permit to any person or persons to operate or manage a community care facility, the State

Department of Social Services shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04 and 2004–05 fiscal years, no fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for a license or special permit to operate a facility providing nonmedical board, room, and care for six or less children or for obtaining a criminal record of the applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (g).

(E) An applicant and any other person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by this subdivision. If an applicant and all other persons described in subdivision (b) meet all of the conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for

the applicant or any of the persons described in subdivision (b), the department may issue a license if the applicant and each person described in subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or any other person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a client, residing in the facility.

(C) Any person who provides client assistance in dressing, grooming, bathing, or personal hygiene. Any nurse assistant or home health aide meeting the requirements of Section 1338.5 or 1736.6, respectively, who is not employed, retained, or contracted by the licensee, and who has been certified or recertified on or after July 1, 1998, shall be deemed to meet the criminal record clearance requirements of this section. A certified nurse assistant and certified home health aide who will be providing client assistance and who falls under this exemption shall provide one copy of his or her current certification, prior to providing care, to the community care facility. The facility shall maintain the copy of the certification on file as long as care is being provided by the certified nurse assistant or certified home health aide at the facility. Nothing in this paragraph restricts the right of the department to exclude a certified nurse assistant or certified home health aide from a licensed community care facility pursuant to Section 1558.

(D) Any staff person, volunteer, or employee who has contact with the clients.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer or other person serving in like capacity.

(F) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's capability to exercise substantial influence over the operation of the facility.

(2) The following persons are exempt from the requirements applicable under paragraph (1).

(A) A medical professional as defined in department regulations who holds a valid license or certification from the person's governing

California medical care regulatory entity and who is not employed, retained, or contracted by the licensee if all of the following apply:

(i) The criminal record of the person has been cleared as a condition of licensure or certification by the person's governing California medical care regulatory entity.

(ii) The person is providing time-limited specialized clinical care or services.

(iii) The person is providing care or services within the person's scope of practice.

(iv) The person is not a community care facility licensee or an employee of the facility.

(B) A third-party repair person or similar retained contractor if all of the following apply:

(i) The person is hired for a defined, time-limited job.

(ii) The person is not left alone with clients.

(iii) When clients are present in the room in which the repairperson or contractor is working, a staff person who has a criminal record clearance or exemption is also present.

(C) Employees of a licensed home health agency and other members of licensed hospice interdisciplinary teams who have a contract with a client or resident of the facility and are in the facility at the request of that client or resident's legal decisionmaker. The exemption shall not apply to a person who is a community care facility licensee or an employee of the facility.

(D) Clergy and other spiritual caregivers who are performing services in common areas of the community care facility or who are advising an individual client at the request of, or with the permission of, the client or legal decisionmaker, are exempt from fingerprint and criminal background check requirements imposed by community care licensing. This exemption shall not apply to a person who is a community care licensee or employee of the facility.

(E) Members of fraternal, service, or similar organizations who conduct group activities for clients if all of the following apply:

(i) Members are not left alone with clients.

(ii) Members do not transport clients off the facility premises.

(iii) The same organization does not conduct group activities for clients more often than defined by the department's regulations.

(3) In addition to the exemptions in paragraph (2), the following persons in foster family homes, certified family homes, and small family homes are exempt from the requirements applicable under paragraph (1):

(A) Adult friends and family of the licensee who come into the home to visit for a length of time no longer than defined by the department in regulations, provided that the adult friends and family of the licensee are not left alone with the foster children.

(B) Parents of a foster child's friends when the foster child is visiting the friend's home and the friend, foster parent, or both are also present.

(4) In addition to the exemptions specified in paragraph (2), the following persons in adult day care and adult day support centers are exempt from the requirements applicable under paragraph (1):

(A) Unless contraindicated by the client's individualized program plan (IPP) or needs and service plan, a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to the client.

(B) A volunteer if all of the following applies:

(i) The volunteer is supervised by the licensee or a facility employee with a criminal record clearance or exemption.

(ii) The volunteer is never left alone with clients.

(iii) The volunteer does not provide any client assistance with dressing, grooming, bathing, or personal hygiene other than washing of hands.

(5) (A) In addition to the exemptions specified in paragraph (2), the following persons in adult residential and social rehabilitation facilities, unless contraindicated by the client's individualized program plan (IPP) or needs and services plan, are exempt from the requirements applicable under paragraph (1): a spouse, significant other, relative, or close friend of a client, or an attendant or a facilitator for a client with a developmental disability if the attendant or facilitator is not employed, retained, or contracted by the licensee. This exemption applies only if the person is visiting the client or providing direct care and supervision to that client.

(B) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individual exempt from the requirements of this section, provided that the individual has client contact.

(6) Any person similar to those described in this subdivision, as defined by the department in regulations.

(c) (1) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a community care facility, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in

the community care facility. These fingerprints shall be on a card provided by the State Department of Social Services or sent by electronic transmission in a manner approved by the State Department of Social Services and the Department of Justice for the purpose of obtaining a permanent set of fingerprints, and shall be submitted to the Department of Justice by the licensee. A licensee's failure to submit fingerprints to the Department of Justice or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency and the immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing. Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(2) Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided for in subdivision (a). If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. Documentation of the individual's clearance or exemption shall be maintained by the licensee and be available for inspection. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the State Department of Social Services, as required by that section, and shall also notify the licensee by mail, within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal history recorded. A violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations as permitted by Section 1548.

(3) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the State Department of Social Services, on the basis of the fingerprints submitted to the Department of Justice, that the person has been convicted of, or is awaiting trial for, a sex offense against a minor, or has been convicted for an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State

Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility. The State Department of Social Services may subsequently grant an exemption pursuant to subdivision (g). If the conviction or arrest was for another crime, except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the community care facility, or bar the person from entering the community care facility; or (2) seek an exemption pursuant to subdivision (g). The State Department of Social Services shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1550.

(4) The department may issue an exemption on its own motion pursuant to subdivision (g) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(5) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (g). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) Before issuing a license, special permit, or certificate of approval to any person or persons to operate or manage a foster family home or certified family home as described in Section 1506, the State Department of Social Services or other approving authority shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons.

(3) No fee shall be charged by the Department of Justice or the State Department of Social Services for the fingerprinting of an applicant for

a license, special permit, or certificate of approval described in this subdivision. The record, if any, shall be taken into consideration when evaluating a prospective applicant.

(4) The following shall apply to the criminal record information:

(A) If the applicant or other persons specified in subdivision (b) have convictions that would make the applicant's home unfit as a foster family home or a certified family home, the license, special permit, or certificate of approval shall be denied.

(B) If the State Department of Social Services finds that the applicant, or any person specified in subdivision (b) is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services or other approving authority may cease processing the application until the conclusion of the trial.

(C) For the purposes of this subdivision, a criminal record clearance provided under Section 8712 of the Family Code may be used by the department or other approving agency.

(D) An applicant for a foster family home license or for certification as a family home, and any other person specified in subdivision (b), shall submit a set of fingerprints to the Department of Justice for the purpose of searching the criminal records of the Federal Bureau of Investigation, in addition to the criminal records search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and all persons described in subdivision (b), the department may issue a license, or the foster family agency may issue a certificate of approval, if the applicant, and each person described in subdivision (b), has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction, as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure or certification, the department determines that the licensee, certified foster parent, or any person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1550 and the certificate of approval revoked pursuant to subdivision (b) of Section 1534. The department may also suspend the license pending an administrative hearing pursuant to Section 1550.5.

(5) Any person specified in this subdivision shall, as a part of the application, be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal convictions or arrests for any crime against a child, spousal or cohabitant abuse or, any crime for which the department cannot grant an exemption if the person was convicted and shall submit these fingerprints to the licensing agency or other approving authority.

(6) (A) The foster family agency shall obtain fingerprints from certified home applicants and from persons specified in subdivision (b) and shall submit them directly to the Department of Justice or send them by electronic transmission in a manner approved by the State Department of Social Services. A foster family home licensee or foster family agency shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation or to comply with paragraph (1) of subdivision (b) prior to the person's employment, residence, or initial presence. A licensee's failure to submit fingerprints to the Department of Justice, or comply with paragraph (1) of subdivision (h), as required in this section, shall result in a citation of a deficiency, and the immediate civil penalties of one hundred dollars ($100) per violation. The State Department of Social Services may assess penalties for continued violations, as permitted by Section 1548. The fingerprints shall then be submitted to the State Department of Social Services for processing.

(B) Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the Department of Justice shall verify receipt of the fingerprints. Within five working days of the receipt of the criminal record or information regarding criminal convictions from the Department of Justice, the department shall notify the applicant of any criminal arrests or convictions. If no arrests or convictions are recorded, the Department of Justice shall provide the foster family home licensee or the foster family agency with a statement of that fact concurrent with providing the information to the State Department of Social Services.

(7) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), has been convicted of a crime other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (g).

(8) If the State Department of Social Services finds after licensure or the granting of the certificate of approval that the licensee, certified foster parent, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license or certificate of approval may be revoked by the department or the foster family agency, whichever is applicable, unless the director grants an exemption pursuant to subdivision (g). A licensee's failure to comply with the department's prohibition of employment, contact with clients, or presence in the facility as required by paragraph (3) of subdivision (c) shall be grounds for disciplining the licensee pursuant to Section 1550.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license,

employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the State Department of Social Services is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of the conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(g) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for a license, special permit, or certificate of approval as specified in paragraphs (4) and (5) of subdivision (d), or for employment, residence, or presence in a community care facility as specified in paragraphs (3), (4), and (5) of subdivision (c), if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of such good character as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). Except as otherwise provided in this

subdivision, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) (i) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(ii) Notwithstanding clause (i), the director may grant an exemption regarding the conviction for an offense described in paragraph (1), (2), (7), or (8) of subdivision (c) of Section 667.5 of the Penal Code, if the employee or prospective employee has been rehabilitated as provided in Section 4852.03 of the Penal Code, has maintained the conduct required in Section 4852.05 of the Penal Code for at least 10 years, and has the recommendation of the district attorney representing the employee's county of residence, or if the employee or prospective employee has received a certificate of rehabilitation pursuant to Chapter 3.5 (commencing with Section 4852.01) of Title 6 of Part 3 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) of Section 451 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1558.

(h) (1) For purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the State Department of Social Services, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a California resident. Upon request of the licensee, who shall enclose a self-addressed envelope for this purpose, the State Department of Social Services shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearance to be transferred.

(i) The full criminal record obtained for purposes of this section may be used by the department or by a licensed adoption agency as a clearance required for adoption purposes.

(j) If a licensee or facility is required by law to deny employment or to terminate employment of any employee based on written notification from the state department that the employee has a prior criminal conviction or is determined unsuitable for employment under Section 1558, the licensee or facility shall not incur civil liability or unemployment insurance liability as a result of that denial or termination.

(k) (1) The Department of Justice shall coordinate with the State Department of Social Services to establish and implement an automated live-scan processing system for fingerprints in the district offices of the Community Care Licensing Division of the State Department of Social Services by July 1, 1999. These live-scan processing units shall be connected to the main system at the Department of Justice by July 1, 1999, and shall become part of that department's pilot project in accordance with its long-range plan. The State Department of Social Services may charge a fee for the costs of processing a set of live-scan fingerprints.

(2) The Department of Justice shall provide a report to the Senate and Assembly fiscal committees, the Assembly Human Services Committee, and to the Senate Health and Human Services Committee by April 15, 1999, regarding the completion of backlogged criminal record clearance requests for all facilities licensed by the State Department of Social Services and the progress on implementing the automated live-scan processing system in the two district offices pursuant to paragraph (1).

(*l*) Amendments to this section made in the 1999 portion of the 1999–2000 Regular Session shall be implemented commencing 60 days after the effective date of the act amending this section in the 1999 portion of the 1999–2000 Regular Session, except that those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation shall be implemented 90 days after the effective date of that act.

SEC. 3. Section 1523.1 of the Health and Safety Code is amended to read:

1523.1. (a) An application fee adjusted by facility and capacity shall be charged by the department for the issuance of a license. After initial licensure, a fee shall be charged by the department annually on each anniversary of the effective date of the license. The fees are for the purpose of financing the activities specified in this chapter. Fees shall be assessed as follows:

Fee Schedule

Facility Type	Capacity	Initial Application	Annual
Foster Family and Adoption Agencies		$2,500	$1,250
Adult Day Programs	1–15	$150	$75
	16–30	$250	$125
	31–60	$500	$250
	61–75	$626	$313
	76–90	$750	$375
	91–120	$1,000	$500
	121+	$1,250	$625
Other Community Care Facilities	1–3	$375	$375
	4–6	$750	$375
	7–15	$1,126	$563
	16–30	$1,500	$750
	31–49	$1,876	$938
	50–74	$2,252	$1,126
	75–100	$2,628	$1,314
	101–150	$3,004	$1,502
	151–200	$3,502	$1,751
	201–250	$4,000	$2,000
	251–300	$4,500	$2,250
	301–350	$5,000	$2,500
	351–400	$5,500	$2,750
	401–500	$6,500	$3,250
	501–600	$7,500	$3,750
	601–700	$8,500	$4,250
	701+	$10,000	$5,000

(b) (1) In addition to fees set forth in subdivision (a), the department shall charge the following fees:

(A) A fee that represents 50 percent of an established application fee when an existing licensee moves the facility to a new physical address.

(B) A fee that represents 50 percent of the established application fee when a corporate licensee changes who has the authority to select a majority of the board of directors.

(C) A fee of twenty-five dollars ($25) when an existing licensee seeks to either increase or decrease the licensed capacity of the facility.

(D) An orientation fee of fifty dollars ($50) for attendance by any individual at a department-sponsored orientation session.

(E) A probation monitoring fee equal to the annual fee, in addition to the annual fee for that category and capacity for each year a license has been placed on probation as a result of a stipulation or decision and order pursuant to the administrative adjudication procedures of the Administrative Procedure Act (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).

(F) A late fee that represents an additional 50 percent of the established annual fee when any licensee fails to pay the annual licensing fee on or before the due date as indicated by postmark on the payment.

(G) A fee to cover any costs incurred by the department for processing payments including, but not limited to, bounced check charges, charges for credit and debit transactions, and postage due charges.

(H) A plan of correction fee of two hundred dollars ($200) when any licensee does not implement a plan of correction on or prior to the date specified in the plan.

(2) Foster family homes shall be exempt from the fees imposed pursuant to this subdivision.

(3) Foster family agencies shall be annually assessed eighty dollars ($80) for each home certified by the agency.

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

(c) (1) The revenues collected from licensing fees pursuant to this section shall be utilized by the department for the purpose of ensuring the health and safety of all individuals provided care and supervision by licensees and to support activities of the licensing program, including, but not limited to, monitoring facilities for compliance with licensing laws and regulations pursuant to this chapter, and other administrative activities in support of the licensing program, when appropriated for these purposes. The revenues collected shall be used in addition to any other funds appropriated in the Budget Act in support of the licensing program.

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

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

(e) The failure of an applicant or licensee to pay all applicable and accrued fees and civil penalties shall constitute grounds for denial or forfeiture of a license.

SEC. 4. Section 1523.2 of the Health and Safety Code is amended to read:

1523.2. (a) Beginning with the 1996–97 fiscal year, there is hereby created in the State Treasury the Technical Assistance Fund, from which money, upon appropriation by the Legislature in the Budget Act, shall be expended by the department to fund administrative and other activities in support of the licensing program.

(b) In each fiscal year, fees collected by the department pursuant to Sections 1523.1, 1568.05, 1569.185, and 1596.803 shall be expended by the department for the purpose of ensuring the health and safety of all individuals provided care and supervision by licensees and to support activities of the licensing program, including, but not limited to, monitoring facilities for compliance with applicable laws and regulations.

SEC. 5. Section 1568.05 of the Health and Safety Code is amended to read:

1568.05. (a) An application fee adjusted by facility and capacity, shall be charged by the department for a license to operate a residential care facility. After initial licensure, a fee shall be charged by the department annually, on each anniversary of the effective date of the license. The fees are for the purpose of financing the activities specified in this chapter. Fees shall be assessed as follows:

Fee Schedule

Capacity	Initial Application	Annual
1–6	$500	$250 plus $10 per bed
7–15	$626	$313 plus $10 per bed
16–25	$750	$375 plus $10 per bed
26–50	$876	$438 plus $10 per bed
51+	$876	$438 plus $10 per bed

(b) (1) In addition to fees set forth in subdivision (a), the department shall charge the following fees:

(A) A fee that represents 50 percent of an established application fee when an existing licensee moves the facility to a new physical address.

(B) A fee that represents 50 percent of the established application fee when a corporate licensee changes who has the authority to select a majority of the board of directors.

(C) A fee of twenty-five dollars ($25) when an existing licensee seeks to either increase or decrease the licensed capacity of the facility.

(D) An orientation fee of fifty dollars ($50) for attendance by any individual at a department-sponsored orientation session.

(E) A probation monitoring fee equal to the annual fee, in addition to the annual fee for that category and capacity for each year a license has been placed on probation as a result of a stipulation or decision and order pursuant to the administrative adjudication procedures of the Administrative Procedure Act (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).

(F) A late fee that represents an additional 50 percent of the established annual fee when any licensee fails to pay the annual licensing fee on or before the due date as indicated by postmark on the payment.

(G) A fee to cover any costs incurred by the department for processing payments including, but not limited to, bounced check charges, charges for credit and debit transactions, and postage due charges.

(H) A plan of correction fee of two hundred dollars ($200) when any licensee does not implement a plan of correction on or prior to the date specified in the plan.

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

(c) All fees collected pursuant to subdivisions (a) and (b) shall be deposited in the Technical Assistance Fund.

(d) The revenues collected from licensing fees pursuant to this section shall be utilized by the department for the purpose of ensuring the health and safety of all individuals provided care and supervision by licensees and to support activities of the licensing program, including, but not limited to, monitoring facilities for compliance with licensing laws and regulations pursuant to this chapter, and other administrative activities in support of the licensing program, when appropriated for these purposes. The revenues collected shall be used in addition to any other funds appropriated in the Budget Act in support of the licensing program.

(e) The department shall not utilize any portion of the revenues collected pursuant to this section sooner than 30 days after notification in writing of the purpose and use of this revenue, as approved by the Director of Finance, to the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the committee in each house that considers appropriations for each fiscal year. The department shall

submit a budget change proposal to justify any positions or any other related support costs on an ongoing basis.

(f) Fees established pursuant to this section shall not be effective unless licensing fees are established for all adult residential facilities licensed by the department.

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

(h) The failure of an applicant for licensure or a licensee to pay all applicable and accrued fees and civil penalties shall constitute grounds for denial or forfeiture of a license.

SEC. 6. Section 1569.185 of the Health and Safety Code is amended to read:

1569.185. (a) An application fee adjusted by facility and capacity shall be charged by the department for the issuance of a license to operate a residential care facility for the elderly. After initial licensure, a fee shall be charged by the department annually on each anniversary of the effective date of the license.

The fees are for the purpose of financing activities specified in this chapter. Fees shall be assessed as follows:

Fee Schedule

Capacity	Initial Application	Annual
1–3	$375	$375
4–6	$750	$375
7–15	$1,126	$563
16–30	$1,500	$750
31–49	$1,876	$938
50–74	$2,252	$1,126
75–100	$2,628	$1,314
101–150	$3,004	$1,502
151–200	$3,502	$1,751
201–250	$4,000	$2,000
251–300	$4,500	$2,250
301–350	$5,000	$2,500
351–400	$5,500	$2,750
401–500	$6,500	$3,250
501–600	$7,500	$3,750
601–700	$8,500	$4,250
701+	$10,000	$5,000

(b) (1) In addition to fees set forth in subdivision (a), the department shall charge the following fees:

(A) A fee that represents 50 percent of an established application fee when an existing licensee moves the facility to a new physical address.

(B) A fee that represents 50 percent of the established application fee when a corporate licensee changes who has the authority to select a majority of the board of directors.

(C) A fee of twenty-five dollars ($25) when an existing licensee seeks to either increase or decrease the licensed capacity of the facility.

(D) An orientation fee of fifty dollars ($50) for attendance by any individual at a department-sponsored orientation session.

(E) A probation monitoring fee equal to the annual fee, in addition to the annual fee for that category and capacity for each year a license has been placed on probation as a result of a stipulation or decision and order pursuant to the administrative adjudication procedures of the Administrative Procedure Act (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).

(F) A late fee that represents an additional 50 percent of the established annual fee when any licensee fails to pay the annual licensing fee on or before the due date as indicated by postmark on the payment.

(G) A fee to cover any costs incurred by the department for processing payments including, but not limited to, bounced check charges, charges for credit and debit transactions, and postage due charges.

(H) A plan of correction fee of two hundred dollars ($200) when any licensee does not implement a plan of correction on or prior to the date specified in the plan.

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

(c) (1) The revenues collected from licensing fees pursuant to this section shall be utilized by the department for the purpose of ensuring the health and safety of all individuals provided care or supervision by licensees and to support the activities of the licensing programs, including, but not limited to, monitoring facilities for compliance with licensing laws and regulations pursuant to this chapter, and other administrative activities in support of the licensing program, when appropriated for these purposes. The revenues collected shall be used in addition to any other funds appropriated in the annual Budget Act in support of the licensing program.

(2) The department shall not utilize any portion of these revenues sooner than 30 days after notification in writing of the purpose and use, as approved by the Department of Finance, to the Chairperson of the Joint Legislative Budget Committee, and the chairpersons of the

committee in each house that considers appropriations for each fiscal year. The department shall submit a budget change proposal to justify any positions or any other related support costs on an ongoing basis.

(d) A residential care facility for the elderly may use a bona fide business check to pay the license fee required under this section.

(e) The failure of an applicant for licensure or a licensee to pay all applicable and accrued fees and civil penalties shall constitute grounds for denial or forfeiture of a license.

SEC. 7. Section 1596.803 of the Health and Safety Code is amended to read:

1596.803. (a) An application fee adjusted by facility and capacity shall be charged by the department for the issuance of a license to operate a child day care facility. After initial licensure, a fee shall be charged by the department annually, on each anniversary of the effective date of the license. The fees are for the purpose of financing activities specified in this chapter. Fees shall be assessed as follows:

Fee Schedule

Facility Type	Capacity	Original Application	Annual Fee
Family Day Care	1–8	$60	$60
	9–14	$115	$115
Day Care Centers	1–30	$400	$200
	31–60	$800	$400
	61–75	$1,000	$500
	76–90	$1,200	$600
	91–120	$1,600	$800
	121+	$2,000	$1,000

(b) (1) In addition to fees set forth in subdivision (a), the department shall charge the following fees:

(A) A fee that represents 50 percent of an established application fee when an existing licensee moves the facility to a new physical address.

(B) A fee that represents 50 percent of the established application fee when a corporate licensee changes who has the authority to select a majority of the board of directors.

(C) A fee of twenty-five dollars ($25) when an existing licensee seeks to either increase or decrease the licensed capacity of the facility.

(D) An orientation fee of twenty-five dollars ($25) for attendance by any individual at a department-sponsored family child day care home orientation session, and a fifty dollar ($50) orientation fee for attendance

by any individual at a department-sponsored child day care center orientation session.

(E) A probation monitoring fee equal to the annual fee, in addition to the annual fee for that category and capacity for each year a license has been placed on probation as a result of a stipulation or decision and order pursuant to the administrative adjudication procedures of the Administrative Procedure Act (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).

(F) A late fee that represents an additional 50 percent of the established annual fee when any licensee fails to pay the annual licensing fee on or before the due date as indicated by postmark on the payment.

(G) A fee to cover any costs incurred by the department for processing payments including, but not limited to, bounced check charges, charges for credit and debit transactions, and postage due charges.

(H) A plan of correction fee of two hundred dollars ($200) when any licensee does not implement a plan of correction on or prior to the date specified in the plan.

(2) No local jurisdiction shall impose any business license, fee, or tax for the privilege of operating a small family day care home licensed under this act.

(c) (1) The revenues collected from licensing fees pursuant to this section shall be utilized by the department for the purpose of ensuring the health and safety of all individuals provided care and supervision by licensees, and to support the activities of the licensing program, including, but not limited to, monitoring facilities for compliance with licensing laws and regulations pursuant to this act, and other administrative activities in support of the licensing program, when appropriated for these purposes. The revenues collected shall be used in addition to any other funds appropriated in the annual Budget Act in support of the licensing program.

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

(d) A child day care facility may use a bona fide business or personal check to pay the license fee required under this section.

(e) The failure of an applicant for licensure or a licensee to pay all applicable and accrued fees and civil penalties shall constitute grounds for denial or forfeiture of a license.

SEC. 8. Section 1596.816 of the Health and Safety Code is amended to read:

1596.816. (a) The Community Care Licensing Division of the department shall regulate child care licensees through an organizational unit that is separate from that used to regulate all other licensing programs. The chief of the child care licensing branch shall report directly to the Deputy Director of the Community Care Licensing Division.

(b) All child care regulatory functions of the licensing division, including the adoption and interpretation of regulations, staff training, monitoring and enforcement functions, administrative support functions, and child care advocacy responsibilities shall be carried out by the child care licensing branch to the extent that separation of these activities can be accomplished without new costs to the department.

(c) Those persons conducting inspections of a day care facilities shall meet qualifications approved by the State Personnel Board.

(d) The department shall notify the appropriate legislative committees whenever actual staffing levels of licensing program analysts within the child care licensing branch drops more than 10 percent below authorized positions.

(e) The budget for the child care licensing branch shall be included as a separate entry within the budget of the department.

SEC. 9. Section 1596.871 of the Health and Safety Code is amended to read:

1596.871. The Legislature recognizes the need to generate timely and accurate positive fingerprint identification of applicants as a condition of issuing licenses, permits, or certificates of approval for persons to operate or provide direct care services in a child care center or family child care home. Therefore, the Legislature supports the use of the fingerprint live-scan technology, as defined in the long-range plan of the Department of Justice for fully automating the processing of fingerprints and other data by the year 1999, otherwise known as the California Crime Information Intelligence System (CAL-CII), to be used for applicant fingerprints. It is the intent of the Legislature in enacting this section to require the fingerprints of those individuals whose contact with child day care facility clients may pose a risk to the children's health and safety.

(a) (1) Before issuing a license or special permit to any person to operate or manage a day care facility, the department shall secure from an appropriate law enforcement agency a criminal record to determine whether the applicant or any other person specified in subdivision (b) has ever been convicted of a crime other than a minor traffic violation or arrested for any crime specified in Section 290 of the Penal Code, for violating Section 245 or 273.5, subdivision (b) of Section 273a or, prior

to January 1, 1994, paragraph (2) of Section 273a of the Penal Code, or for any crime for which the department cannot grant an exemption if the person was convicted and the person has not been exonerated.

(2) The criminal history information shall include the full criminal record, if any, of those persons, and subsequent arrest information pursuant to Section 11105.2 of the Penal Code.

(3) Except during the 2003–04 and 2004–05 fiscal years, no fee shall be charged by the Department of Justice or the department for the fingerprinting of an applicant who will serve six or fewer children or any family day care applicant for a license, or for obtaining a criminal record of an applicant pursuant to this section.

(4) The following shall apply to the criminal record information:

(A) If the State Department of Social Services finds that the applicant or any other person specified in subdivision (b) has been convicted of a crime, other than a minor traffic violation, the application shall be denied, unless the director grants an exemption pursuant to subdivision (f).

(B) If the State Department of Social Services finds that the applicant, or any other person specified in subdivision (b), is awaiting trial for a crime other than a minor traffic violation, the State Department of Social Services may cease processing the application until the conclusion of the trial.

(C) If no criminal record information has been recorded, the Department of Justice shall provide the applicant and the State Department of Social Services with a statement of that fact.

(D) If the State Department of Social Services finds after licensure that the licensee, or any other person specified in paragraph (2) of subdivision (b), has been convicted of a crime other than a minor traffic violation, the license may be revoked, unless the director grants an exemption pursuant to subdivision (f).

(E) An applicant and any other person specified in subdivision (b) shall submit a second set of fingerprints to the Department of Justice, for the purpose of searching the records of the Federal Bureau of Investigation, in addition to the search required by subdivision (a). If an applicant meets all other conditions for licensure, except receipt of the Federal Bureau of Investigation's criminal history information for the applicant and persons listed in subdivision (b), the department may issue a license if the applicant and each person described by subdivision (b) has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after licensure, the department determines that the licensee or person specified in subdivision (b) has a criminal record, the license may be revoked pursuant to Section 1596.885. The department

may also suspend the license pending an administrative hearing pursuant to Section 1596.886.

(b) (1) In addition to the applicant, this section shall be applicable to criminal convictions of the following persons:

(A) Adults responsible for administration or direct supervision of staff.

(B) Any person, other than a child, residing in the facility.

(C) Any person who provides care and supervision to the children.

(D) Any staff person, volunteer, or employee who has contact with the children.

(i) A volunteer providing time-limited specialized services shall be exempt from the requirements of this subdivision if this person is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the volunteer spends no more than 16 hours per week at the facility, and the volunteer is not left alone with children in care.

(ii) A student enrolled or participating at an accredited educational institution shall be exempt from the requirements of this subdivision if the student is directly supervised by the licensee or a facility employee with a criminal record clearance or exemption, the facility has an agreement with the educational institution concerning the placement of the student, the student spends no more than 16 hours per week at the facility, and the student is not left alone with children in care.

(iii) A volunteer who is a relative, legal guardian, or foster parent of a client in the facility shall be exempt from the requirements of this subdivision.

(iv) A contracted repair person retained by the facility, if not left alone with children in care, shall be exempt from the requirements of this subdivision.

(v) Any person similar to those described in this subdivision, as defined by the department in regulations.

(E) If the applicant is a firm, partnership, association, or corporation, the chief executive officer, other person serving in like capacity, or a person designated by the chief executive officer as responsible for the operation of the facility, as designated by the applicant agency.

(F) If the applicant is a local educational agency, the president of the governing board, the school district superintendent, or a person designated to administer the operation of the facility, as designated by the local educational agency.

(G) Additional officers of the governing body of the applicant, or other persons with a financial interest in the applicant, as determined necessary by the department by regulation. The criteria used in the development of these regulations shall be based on the person's

capability to exercise substantial influence over the operation of the facility.

(H) This section does not apply to employees of child care and development programs under contract with the State Department of Education who have completed a criminal records clearance as part of an application to the Commission on Teacher Credentialing, and who possess a current credential or permit issued by the commission, including employees of child care and development programs that serve both children subsidized under, and children not subsidized under, a State Department of Education contract. The Commission on Teacher Credentialing shall notify the department upon revocation of a current credential or permit issued to an employee of a child care and development program under contract with the State Department of Education.

(I) This section does not apply to employees of a child care and development program operated by a school district, county office of education, or community college district under contract with the State Department of Education who have completed a criminal record clearance as a condition of employment. The school district, county office of education, or community college district upon receiving information that the status of an employee's criminal record clearance has changed shall submit that information to the department.

(2) Nothing in this subdivision shall prevent a licensee from requiring a criminal record clearance of any individuals exempt from the requirements under this subdivision.

(c) (1) (A) Subsequent to initial licensure, any person specified in subdivision (b) and not exempted from fingerprinting shall, as a condition to employment, residence, or presence in a child day care facility be fingerprinted and sign a declaration under penalty of perjury regarding any prior criminal conviction. The licensee shall submit these fingerprints to the Department of Justice, along with a second set of fingerprints for the purpose of searching the records of the Federal Bureau of Investigation, or to comply with paragraph (1) of subdivision (h), prior to the person's employment, residence, or initial presence in the child day care facility.

(B) These fingerprints shall be on a card provided by the State Department of Social Services for the purpose of obtaining a permanent set of fingerprints and submitted to the Department of Justice by the licensee or sent by electronic transmission in a manner approved by the State Department of Social Services. A licensee's failure to submit fingerprints to the Department of Justice, or to comply with paragraph (1) of subdivision (h), as required in this section, shall result in the citation of a deficiency, and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The State

Department of Social Services may assess civil penalties for continued violations permitted by Sections 1596.99 and 1597.62. The fingerprints shall then be submitted to the State Department of Social Services for processing. Within 14 calendar days of the receipt of the fingerprints, the Department of Justice shall notify the State Department of Social Services of the criminal record information, as provided in this subdivision. If no criminal record information has been recorded, the Department of Justice shall provide the licensee and the State Department of Social Services with a statement of that fact within 14 calendar days of receipt of the fingerprints. If new fingerprints are required for processing, the Department of Justice shall, within 14 calendar days from the date of receipt of the fingerprints, notify the licensee that the fingerprints were illegible.

(C) Documentation of the individual's clearance or exemption shall be maintained by the licensee, and shall be available for inspection. When live-scan technology is operational, as defined in Section 1522.04, the Department of Justice shall notify the department, as required by that section, and notify the licensee by mail within 14 days of electronic transmission of the fingerprints to the Department of Justice, if the person has no criminal record. Any violation of the regulations adopted pursuant to Section 1522.04 shall result in the citation of a deficiency and an immediate assessment of civil penalties in the amount of one hundred dollars ($100) per violation. The department may assess civil penalties for continued violations, as permitted by Sections 1596.99 and 1597.62.

(2) Except for persons specified in paragraph (2) of subdivision (b), the licensee shall endeavor to ascertain the previous employment history of persons required to be fingerprinted under this subdivision. If it is determined by the department, on the basis of fingerprints submitted to the Department of Justice, that the person has been convicted of a sex offense against a minor, an offense specified in Section 243.4, 273a, 273d, 273g, or 368 of the Penal Code, or a felony, the State Department of Social Services shall notify the licensee to act immediately to terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility. The department may subsequently grant an exemption pursuant to subdivision (f). If the conviction was for another crime except a minor traffic violation, the licensee shall, upon notification by the State Department of Social Services, act immediately to either (1) terminate the person's employment, remove the person from the child day care facility, or bar the person from entering the child day care facility; or (2) seek an exemption pursuant to subdivision (f). The department shall determine if the person shall be allowed to remain in the facility until a decision on the exemption is rendered. A licensee's failure to comply

with the department's prohibition of employment, contact with clients, or presence in the facility as required by this paragraph shall be grounds for disciplining the licensee pursuant to Section 1596.885 or 1596.886.

(3) The department may issue an exemption on its own motion pursuant to subdivision (f) if the person's criminal history indicates that the person is of good character based on the age, seriousness, and frequency of the conviction or convictions. The department, in consultation with interested parties, shall develop regulations to establish the criteria to grant an exemption pursuant to this paragraph.

(4) Concurrently with notifying the licensee pursuant to paragraph (3), the department shall notify the affected individual of his or her right to seek an exemption pursuant to subdivision (f). The individual may seek an exemption only if the licensee terminates the person's employment or removes the person from the facility after receiving notice from the department pursuant to paragraph (3).

(d) (1) For purposes of this section or any other provision of this chapter, a conviction means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action which the department is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, notwithstanding a subsequent order pursuant to Sections 1203.4 and 1203.4a of the Penal Code permitting the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment. For purposes of this section or any other provision of this chapter, the record of a conviction, or a copy thereof certified by the clerk of the court or by a judge of the court in which the conviction occurred, shall be conclusive evidence of the conviction. For purposes of this section or any other provision of this chapter, the arrest disposition report certified by the Department of Justice, or documents admissible in a criminal action pursuant to Section 969b of the Penal Code, shall be prima facie evidence of conviction, notwithstanding any other provision of law prohibiting the admission of these documents in a civil or administrative action.

(2) For purposes of this section or any other provision of this chapter, the department shall consider criminal convictions from another state or federal court as if the criminal offense was committed in this state.

(e) The State Department of Social Services shall not use a record of arrest to deny, revoke, or terminate any application, license, employment, or residence unless the department investigates the incident and secures evidence, whether or not related to the incident of arrest, that is admissible in an administrative hearing to establish

conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. The State Department of Social Services is authorized to obtain any arrest or conviction records or reports from any law enforcement agency as necessary to the performance of its duties to inspect, license, and investigate community care facilities and individuals associated with a community care facility.

(f) (1) After review of the record, the director may grant an exemption from disqualification for a license or special permit as specified in paragraphs (1) and (4) of subdivision (a), or for employment, residence, or presence in a child day care facility as specified in paragraphs (3), (4), and (5) of subdivision (c) if the director has substantial and convincing evidence to support a reasonable belief that the applicant and the person convicted of the crime, if other than the applicant, are of good character so as to justify issuance of the license or special permit or granting an exemption for purposes of subdivision (c). However, no exemption shall be granted pursuant to this subdivision if the conviction was for any of the following offenses:

(A) An offense specified in Section 220, 243.4, or 264.1, subdivision (a) of Section 273a or, prior to January 1, 1994, paragraph (1) of Section 273a, Section 273d, 288, or 289, subdivision (a) of Section 290, or Section 368 of the Penal Code, or was a conviction of another crime against an individual specified in subdivision (c) of Section 667.5 of the Penal Code.

(B) A felony offense specified in Section 729 of the Business and Professions Code or Section 206 or 215, subdivision (a) of Section 347, subdivision (b) of Section 417, or subdivision (a) or (b) of Section 451 of the Penal Code.

(2) The department shall not prohibit a person from being employed or having contact with clients in a facility on the basis of a denied criminal record exemption request or arrest information unless the department complies with the requirements of Section 1596.8897.

(g) Upon request of the licensee, who shall enclose a self-addressed stamped postcard for this purpose, the Department of Justice shall verify receipt of the fingerprints.

(h) (1) For the purposes of compliance with this section, the department may permit an individual to transfer a current criminal record clearance, as defined in subdivision (a), from one facility to another, as long as the criminal record clearance has been processed through a state licensing district office, and is being transferred to another facility licensed by a state licensing district office. The request shall be in writing to the department, and shall include a copy of the person's driver's license or valid identification card issued by the Department of Motor Vehicles, or a valid photo identification issued by another state or the United States government if the person is not a

California resident. Upon request of the licensee, who shall enclose a self-addressed stamped envelope for this purpose, the department shall verify whether the individual has a clearance that can be transferred.

(2) The State Department of Social Services shall hold criminal record clearances in its active files for a minimum of two years after an employee is no longer employed at a licensed facility in order for the criminal record clearances to be transferred.

(i) Amendments to this section made in the 1998 calendar year shall be implemented commencing 60 days after the effective date of the act amending this section in the 1998 calendar year, except those provisions for the submission of fingerprints for searching the records of the Federal Bureau of Investigation, which shall be implemented commencing January 1, 1999.

SEC. 10. Section 1596.872a of the Health and Safety Code is amended to read:

1596.872a. (a) The department may establish a child care advocate program. Each regional office, as well as the central office of the department, may have an advocate who has knowledge of state child care laws, regulations, and programs. The advocate's duties shall include, but not be limited to, all of the following:

(1) Providing information to the general public and parents on child care licensing standards and regulations.

(2) Serving as a liaison to local business, community, law enforcement, labor, and education groups, as well as child care providers and consumers, for the purpose of providing information about licensing standards and regulations.

(3) Disseminating information on the state's licensing role and activities, child care resource and referral agencies, and other child care programs.

(4) Acting as a liaison to child care resource and referral agencies to provide current information on licensing regulations, procedures, violations, revocations, and activities.

(5) Investigating and seeking to resolve complaints and concerns communicated on behalf of children served by a child day care facility. Complaints shall be handled in an objective manner to ascertain the pertinent facts. The ombudsman may refer any complaint to the appropriate state or local government agency.

(b) The advocate shall have access to child day care facilities and shall have the authority to speak with children and staff.

(c) The department shall report to the Legislature and the Governor, on December 31, 1985, and annually thereafter, the number of complaints resolved and referred and any related followup activities, and the number of facilities visited pursuant to subdivision (a).

(d) The department shall implement this section during periods that Section 1596.872b is not being implemented in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 11. Section 1596.872b of the Health and Safety Code is amended to read:

1596.872b. (a) The department may establish a child care advocate program. This program may have one child care advocate for each licensing district regional office providing child care licensing services. A chief child care advocate shall be responsible for operations of the program and shall report to the chief of the child care licensing branch.

Each child care advocate shall have knowledge of state child care laws, regulations, and programs. The child care advocate's duties shall include, but not be limited to, all of the following:

(1) Providing information to the general public and parents on child care licensing standards and regulations.

(2) Serving as a liaison to local business, community, law enforcement, labor, and education groups, as well as child care providers and consumers, for the purpose of providing information about licensing standards and regulations.

(3) Disseminating information on the state's licensing role and activities, child care resource and referral agencies, and other child care programs.

(4) Acting as a liaison to child care resource and referral agencies to provide current information on licensing regulations, procedures, violations, revocations, and activities.

(5) Evaluating and seeking to resolve complaints and concerns communicated on behalf of children served by a child day care facility. Complaints shall be handled in an objective manner to ascertain the pertinent facts. The child care advocate may refer any complaint to the appropriate state or local government agency.

(6) Seeking to mediate disputes between the department and child care licensees, where licensees allege misapplication of licensing regulations and have exercised any initial appeal rights as specified in Section 1596.842.

(b) The child care advocate shall have access to child day care facilities and shall have the authority to speak with children and staff.

(c) The department may implement this section only to the extent funds are available in accordance with Section 18285.5 of the Welfare and Institutions Code.

SEC. 12. Section 11970.2 of the Health and Safety Code is amended to read:

11970.2. (a) A county alcohol and drug program administrator and the presiding judge in the county shall develop and submit a comprehensive multiagency drug court plan for implementing

cost-effective local drug court systems for adults, juveniles, and parents of children who are detained by, or are dependents of, the juvenile court to be eligible for funding under this chapter. The plan shall do all of the following:

(1) Describe existing programs that serve substance abusing adults, juveniles, and parents of children who are detained by, or are dependents of, the juvenile court.

(2) Provide a local action plan for implementing cost-effective drug court systems, including any or all of the following drug court systems:

(A) Drug courts operating pursuant to Sections 1000 to 1000.5, inclusive, of the Penal Code.

(B) Drug courts for juvenile offenders.

(C) Drug courts for parents of children who are detained by, or are dependents of, the juvenile court.

(D) Drug courts for parents of children in family law cases involving custody and visitation issues.

(E) Other drug court systems that are approved by the Drug Court Partnership Executive Steering Committee.

(3) Develop information-sharing systems to ensure that county actions are fully coordinated, and to provide data for measuring the success of the local action plan in achieving its goals.

(4) Identify outcome measures that will determine the cost effectiveness of the local action plan.

(b) (1) Except as provided in paragraph (4), the department, in collaboration with the Judicial Council, shall distribute funds to eligible counties using the two thousand five hundred dollars ($2,500) per million/remainder per capita methodology, subject to appropriation in the Budget Act. Funding shall be used to supplement, rather than supplant, existing programs. Funding for counties that opt not to participate in the program shall be distributed on a per capita basis to participating counties.

(2) Funds distributed to counties shall be used for programs that are identified in the local plan. Acceptable uses may include, but are not limited to, any of the following: drug court coordinators, case management, training, drug testing, treatment, transportation, and other costs related to the implementation of the plan.

(3) No funds shall be distributed unless the applicant makes available resources in an amount equal to at least 10 percent of the amount of the funds distributed in years one and two, and 20 percent of the amount of the funds distributed in years three, four, and five.

(4) Subject to an appropriation by the Budget Act for this purpose in the 2004–05 fiscal year, and for any subsequent fiscal year for which an appropriation has been provided, the department shall provide a supplemental allocation of funding for the planning or expansion of new

or existing dependency drug court programs in selected counties. The department, in collaboration with the Judicial Council and with input from the State Department of Social Services, shall select counties for this supplemental allocation of funds for dependency drug courts on the basis of a determination, in its discretion, that a selected county is prepared to implement or expand a dependency drug court or to engage in planning for the development of court systems and has a good record of complying with program rules in the past. The department may prioritize funding allocations for a county that has included a dependency drug court proposal in its system improvement plan for child welfare services. Any county that is selected for and accepts a supplemental allocation of dependency court funds shall, pursuant to this paragraph, agree not to use state funds to supplant any existing resources now used by that county for a dependency drug court. The department, in collaboration with the Judicial Council and with input from the State Department of Social Services, shall adopt appropriate data collection and reporting requirements to measure program outcomes and cost-effectiveness, including the amount of foster care savings realized.

(c) The department, with concurrence from the Judicial Council, shall establish minimum standards, funding schedules, and procedures for funding programs.

(d) The department, in collaboration with the Judicial Council, shall create an evaluation design for the Comprehensive Drug Court Implementation Act of 1999, that will assess the effectiveness of the program. The department, together with the Judicial Council, shall develop an interim report to be submitted to the Legislature on or before March 1, 2004, and a final analysis of the program in a report to be submitted to the Legislature on or before March 1, 2005.

SEC. 13. Section 128241 is added to the Health and Safety Code, to read:

128241. The Office of Statewide Health Planning and Development shall develop alternative strategies to provide long-term stability and non-General Fund support for programs established pursuant to this article. The office shall report on these strategies to the legislative budget committees by February 1, 2005.

SEC. 14. Section 273d of the Penal Code is amended to read:

273d. (a) Any person who willfully inflicts upon a child any cruel or inhuman corporal punishment or an injury resulting in a traumatic condition is guilty of a felony and shall be punished by imprisonment in the state prison for two, four, or six years, or in a county jail for not more than one year, by a fine of up to six thousand dollars ($6,000), or by both that imprisonment and fine.

(b) Any person who is found guilty of violating subdivision (a) shall receive a four-year enhancement for a prior conviction of that offense provided that no additional term shall be imposed under this subdivision for any prison term served prior to a period of 10 years in which the defendant remained free of both prison custody and the commission of an offense that results in a felony conviction.

(c) If a person is convicted of violating this section and probation is granted, the court shall require the following minimum conditions of probation:

(1) A mandatory minimum period of probation of 36 months.

(2) A criminal court protective order protecting the victim from further acts of violence or threats, and, if appropriate, residence exclusion or stay-away conditions.

(3) (A) Successful completion of no less than one year of a child abuser's treatment counseling program. The defendant shall be ordered to begin participation in the program immediately upon the grant of probation. The counseling program shall meet the criteria specified in Section 273.1. The defendant shall produce documentation of program enrollment to the court within 30 days of enrollment, along with quarterly progress reports.

(B) The terms of probation for offenders shall not be lifted until all reasonable fees due to the counseling program have been paid in full, but in no case shall probation be extended beyond the term provided in subdivision (a) of Section 1203.1. If the court finds that the defendant does not have the ability to pay the fees based on the defendant's changed circumstances, the court may reduce or waive the fees.

(4) If the offense was committed while the defendant was under the influence of drugs or alcohol, the defendant shall abstain from the use of drugs or alcohol during the period of probation and shall be subject to random drug testing by his or her probation officer.

(5) The court may waive any of the above minimum conditions of probation upon a finding that the condition would not be in the best interests of justice. The court shall state on the record its reasons for any waiver.

SEC. 15. Section 1611.5 of the Unemployment Insurance Code is amended to read:

1611.5. Notwithstanding Section 1611, the Legislature may appropriate from the Employment Training Fund fifty-six million four hundred thirty-two thousand dollars ($56,432,000) in the Budget Act of 2004 to fund the local assistance portion of welfare-to-work activities under the CalWORKs program, provided for pursuant to Article 3.2 (commencing with Section 11320) of Chapter 2 of Part 3 of Division 9 of the Welfare and Institutions Code, as administered by the State Department of Social Services.

SEC. 16. Section 9404 is added to the Welfare and Institutions Code, to read:

9404. An individual's receipt of services under the In-Home Supportive Services Program (Article 7 (commencing with Section 12300), Part 3, Division 9) shall not be the sole cause for denial of any services provided by area agencies on aging or their contractors.

SEC. 17. Section 10531 of the Welfare and Institutions Code is amended to read:

10531. Each county shall develop a plan consistent with state law that describes how the county intends to deliver the full range of activities and services necessary to move CalWORKs recipients from welfare to work. The plan shall be updated as needed. The plan shall describe:

(a) How the county will collaborate with other public and private agencies to provide for all necessary training, and support services.

(b) The county's partnerships with the private sector, including employers and employer associations, and how those partnerships will identify jobs for CalWORKs program recipients.

(c) Other means the county will use to identify local labor market needs.

(d) The range of welfare-to-work activities the county will offer recipients and the identification of any allowable activities that will not be offered.

(e) The process the county will use to provide for the availability of substance abuse and mental health treatment services.

(f) The process the county will use to provide for child care and transportation services.

(g) The county's community service plan.

(h) How the county will provide training of county workers responsible for working with CalWORKs recipients who are victims of domestic violence.

(i) The performance outcomes identified during the local planning process that the county or other local agencies will track in order to measure the extent to which the county's program meets locally established objectives.

(j) The means the county used to provide broad public input to the development of the county's plan.

(k) A budget that specifies the source and expenditures of funds for the program.

(*l*) How the county will assist families that are transitioning off aid.

(m) All necessary components of the job creation plan required by Section 15365.55 of the Government Code in counties that choose to implement the program described in Chapter 1.12 (commencing with

Section 15365.50) of Part 6.7 of Division 3 of Title 2 of the Government Code.

(n) Other elements identified by the director, in consultation with the steering committee under Section 10544.5, including elements related to the performance outcomes listed in Sections 10540 and 10541.

(o) How the county will comply with federal requirements of the Temporary Assistance for Needy Families program (Part A (commencing with Section 601) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code).

(p) How the county will coordinate welfare-to-work activities with the local private industry councils or alternate administrative entities designated by the Governor to administer local welfare-to-work programs, including the expenditure of state or other matching funds provided to the county welfare department for welfare-to-work activities. No later than September 1, 1998, and each year thereafter, subject to continued welfare-to-work funding, each county shall submit an addendum to its plan required under this section that describes its coordination efforts.

SEC. 18. Section 10532 of the Welfare and Institutions Code is amended to read:

10532. The department and the counties shall implement the provisions of the CalWORKs program in the following manner:

(a) The department shall issue a planning allocation letter and county plan instructions to the counties within 30 days of the enactment of the CalWORKs program.

(b) (1) Each county shall submit a plan for implementation of the CalWORKs program within four months of the issuance of the planning allocation letter by the department. A county may begin implementation of its plan upon submission of the plan to the department or the effective date of the CalWORKs program, whichever is later.

(2) Within 30 days of receipt of a county plan, the department shall either certify that the plan includes the description of the elements required by Section 10531 and that the descriptions are consistent with the requirements of state law and, to the extent applicable, federal law or notify the county that the plan is not complete or consistent stating the reasons therefor.

(3) If a county is notified that its plan is not complete or consistent, the county shall, within 30 days, resubmit a revised plan to the department for certification.

(c) A county shall begin enrolling all new applicants for aid under this chapter in the county's welfare-to-work program no later than six months from the date of issuance of the planning allocation letter references in subdivision (a) or two months after the certification of the county plan, whichever is later.

(d) Funds remaining at the end of the 1997–98 fiscal year or the 1998–99 fiscal year from the funds provided to a county in those years pursuant to Section 15204.2 shall be available to a county until July 1, 2000, and may be expended only for the purposes set forth in Section 15204.2.

SEC. 19. Section 10553.2 of the Welfare and Institutions Code, as added by Section 34 of Chapter 270 of the Statutes of 1997, is amended and renumbered, to read:

10553.25. (a) The department shall make an annual allocation of funds appropriated for the purpose of this subdivision to all eligible federally recognized American Indian tribes with reservation lands or rancherias located in this state that administer a program pursuant to the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (P.L. 104-193).

(b) The department shall collect and maintain specific available data for each tribe in this state for federal fiscal year 1994 for the purpose of the implementation and administration of the federal program.

(c) The department shall submit requests on behalf of tribes, for all applicable federal waivers and exemptions for all eligible federally recognized American Indian tribes located on reservations and rancherias, or for consortia of tribes, for the administration of the CalWORKs program, whether or not tribes administer an approved Temporary Assistance for Needy Families (TANF) plan, independent of any county participation, demographics, or circumstances.

(d) Each county, in the administration of the CalWORKs program, shall consult with all eligible federally recognized tribes within any portion of the county, for the purpose of providing American Indian recipients with equitable access to assistance under the state program or an approved tribal TANF program if implemented in the county, and for the consideration of transfers of administration responsibilities to those entities.

(e) For the 2004–05 fiscal year, the annual allocation of funds made pursuant to subdivision (a) shall be reduced by thirty million five hundred thirty-two thousand dollars ($30,532,000).

(f) (1) For the 2004–05 fiscal year, fifteen million five hundred thousand dollars ($15,500,000) in unspent funds originally allocated to the Torres-Martinez Tribal TANF program in 2003–04 shall be used, to partially offset the reduction for tribal TANF programs specified in subdivision (e).

(2) The fifteen million five hundred thousand dollars ($15,500,000) shall be made available contingent upon the approval from the Torres-Martinez Tribal TANF program, if the department deems that approval is necessary.

(3) Each tribal TANF program that has been budgeted to receive a tribal TANF grant in the 2004–05 fiscal year shall receive a proportionate share of the net reduction specified in this subdivision and subdivision (e). However, no tribal TANF grant for the 2004–05 fiscal year shall be reduced by more than 20 percent.

(g) Beginning July 1, 2005, state funding for existing tribal TANF programs provided pursuant to this section shall be based on actual program caseloads, including both assistance and service only cases. The definition of ''assistance cases'' and ''service only cases'' shall be consistent with federal TANF requirements contained in Part 260.31 of Title 45 of the Code of Federal Regulations. Tribal TANF programs shall do both of the following:

(1) Report to the department on a quarterly basis the number of cases served by designated category, assistance cases, or service only cases.

(2) Provide the department, on an annual basis, an audited certification that the number of cases designated in each category have been sampled and verified.

(h) In no case shall the state match under subdivision (g) exceed the original state share designated for the tribal TANF program in the original negotiation of 1994 caseload counts.

(i) Subdivisions (g) and (h) shall apply only to tribal TANF programs that have received state funding for at least three years prior to the beginning of the fiscal year. Those programs that have received funding for less than three years shall not have their state match adjusted.

(j) The department shall amend the state TANF plan to reflect that the state adopts by reference the federally approved financial eligibility criteria established by each tribal TANF program as the state's financial eligibility criteria when determining eligibility for state funded services provided by tribal TANF programs.

(k) Beginning July 1, 2005, the department shall not reduce county single allocations to offset funding provided for tribal TANF programs. The department may adjust county single allocations to reflect the actual caseload declines associated with the number of Native American cases transferring from the counties to the tribal TANF programs.

SEC. 20. Section 11320.1 of the Welfare and Institutions Code is amended to read:

11320.1. Subsequent to the commencement of the receipt of aid under this chapter, the sequence of employment related activities required of participants under this article, unless exempted under Section 11320.3, shall be as follows:

(a) Job search. Recipients shall, and applicants may, at the option of a county and with the consent of the applicant, receive orientation to the welfare-to-work program provided under this article, receive

appraisal pursuant to Section 11325.2, and participate in job search and job club activities provided pursuant to Section 11325.22.

(b) Assessment. If employment is not found during the period provided for pursuant to subdivision (a), or at any time the county determines that participation in job search for the period specified in subdivision (a) of Section 11325.22 is not likely to lead to employment, the participant shall be referred to assessment, as provided for in Section 11325.4. Following assessment, the county and the participant shall develop a welfare-to-work plan, as specified in Section 11325.21. The plan shall specify the activities provided for in Section 11322.6 to which the participant shall be assigned, and the supportive services, as provided for pursuant to Section 11323.2, with which the recipient will be provided.

(c) Work activities. A participant who has signed a welfare-to-work plan pursuant to Section 11325.21 shall participate in work activities. Except as provided in Section 11325.23, at least 20 hours per week shall be spent in core activities, as specified in subdivision (c) of Section 11322.8.

SEC. 21. Section 11322.8 of the Welfare and Institutions Code is amended to read:

11322.8. (a) Unless otherwise exempt, an adult recipient in a one-parent assistance unit shall participate in welfare-to-work activities for 32 hours each week.

(b) Unless otherwise exempt, an adult recipient who is an unemployed parent, as defined in Section 11201, shall participate in at least 35 hours of welfare-to-work activities each week. However, both parents in a two-parent assistance unit may contribute to the 35 hours if at least one parent meets the federal one-parent work requirement applicable on January 1, 1998.

(c) An adult recipient required to participate under subdivision (a) or (b) shall participate for at least 20 hours each week in core welfare-to-work activities. The welfare-to-work activities listed in subdivisions (a) to (j), inclusive, and (m) and (n) of Section 11322.6, are core activities for the purposes of this section. Participation in core activities under subdivision (m) of Section 11322.6 shall be limited to a total of 12 months. Additional hours that the applicant or recipient is required to participate under subdivisions (a) or (b) of this section may be satisfied by any of the welfare-to-work activities described in Section 11322.6 that are consistent with the assessment performed in accordance with Section 11325.4, and included in the individual's welfare-to-work plan, described in Section 11325.21.

(d) Hours spent in activities listed under subdivision (q) of Section 11322.6 shall count toward the core activity requirement in subdivision (c) to the extent that these activities are necessary to enable the individual

to participate in core activities and to the extent these activities cannot be accomplished within the additional noncore hours of participation required by subdivision (c).

(e) Hours spent in classroom, laboratory, or internship activities pursuant to subdivisions (k), (*l*), and (o) of Section 11322.6 shall count toward the core activity requirement in subdivision (c) to the extent these activities cannot be accomplished within the additional noncore hours of participation, the county determines the program is likely to lead to self-supporting employment, and the recipient makes satisfactory progress. The provisions in paragraph (2), and subparagraphs (A) and (B) of paragraph (3), of subdivision (a) of Section 11325.23 shall apply to participants in these activities.

SEC. 22. Section 11322.9 of the Welfare and Institutions Code is amended to read:

11322.9. (a) Community service activities shall meet all of the following criteria:

(1) Be performed in the public and private nonprofit sector.

(2) Provide participants with job skills that can lead to unsubsidized employment.

(3) Comply with the antidisplacement provisions contained in Section 11324.6.

(b) Participants in community service activities shall do all of the following:

(1) Participate in a community service activity for the number of hours required by Section 11322.8, unless fewer hours of community service participation are required by federal law.

(2) Participate in other work activities for the number of hours equal to the difference between the hours of participation in community service and the number of hours of participation required under Section 11322.8.

(c) The county plan pursuant to Section 10531 shall include a component, developed by the county in collaboration with local private sector employers, local education agencies, county welfare departments, organized labor, recipients of aid under this chapter, and government and community-based organizations providing job training and economic development, in order to identify all of the following:

(1) Unmet community needs that could be met through community service activities.

(2) The target population to be served.

(3) Entities responsible for project development, fiscal administration, and case management services.

(4) The terms of community service activities, that, to the extent feasible, shall be temporary and transitional, and not permanent.

(5) Supportive efforts, including job search, education, and training, which shall be provided to participants in community service activities.

(6) If the county intends to include grant-based on-the-job training in its community service plan, the process by which the county will comply with the voluntary consent form requirement established in subdivision (f) of Section 11322.6, including a list of the languages in which the consent form will be available.

(d) Aid under this chapter for any participant who fails to comply with the requirements of this section without good cause shall be reduced in accordance with Section 11327.5.

SEC. 23. Section 11325.21 of the Welfare and Institutions Code is amended to read:

11325.21. (a) Any individual who is required to participate in welfare-to-work activities pursuant to this article shall enter into a written welfare-to-work plan with the county welfare department after assessment as required by subdivision (b) of Section 11320.1, but no more than 90 days after the date that a recipient's eligibility for aid is determined or the date the recipient is required to participate in welfare-to-work activities pursuant to Section 11320.3. The recipient and the county may enter into a welfare-to-work plan as late as 90 days after the completion of the job search activity, as defined in subdivision (a) of Section 11320.1, if the job search activity is initiated within 30 days after the recipient's eligibility for aid is determined. The plan shall include the activities and services that will move the individual into employment.

(b) The county shall allow the participant three working days after completion of the plan or subsequent amendments to the plan in which to evaluate and request changes to the terms of the plan.

(c) The plan shall be written in clear and understandable language, and have a simple and easy-to-read format.

(d) The plan shall contain at least all of the following general information:

(1) A general description of the program provided for in this article, including available program components and supportive services.

(2) A general description of the rights, duties, and responsibilities of program participants, including a list of the exemptions from the required participation under this article, the consequences of a refusal to participate in program components, and criteria for successful completion of the program.

(3) A description of the grace period required in paragraph (5) of subdivision (b) of Section 11325.22.

(e) The plan shall specify, and shall be amended to reflect changes in, the participant's welfare-to-work activity, a description of services to be provided in accordance with Sections 11322.6, and 11322.8 as needed,

and specific requirements for successful completion of assigned activities including required hours of participation.

The plan shall also include a general description of supportive services pursuant to Section 11323.2 that are to be provided as necessary for the participant to complete assigned program activities.

(f) Any assignment to a program component shall be reflected in the plan or an amendment to the plan. The participant shall maintain satisfactory progress toward employment through the methods set forth in the plan, and the county shall provide the services pursuant to Section 11323.2.

(g) This section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331) during the time that article is operative.

SEC. 24. Section 11325.22 of the Welfare and Institutions Code is amended to read:

11325.22. (a) (1) Following the appraisal required by Section 11325.2, all participants except those described in paragraph (4) of this subdivision, shall be assigned to participate for a period of up to four consecutive weeks in job search activities. These activities may include the use of job clubs to identify the participant's qualifications. The county shall consider the skills and interests of the participants in developing a job search strategy. The period of job search activities may be shortened if the participant and the county agree that further activities would not be beneficial. Job search activities may be shortened for a recipient if the county determines that the recipient will not benefit because he or she may suffer from an emotional or mental disability that will limit or preclude the recipient's participation under this article.

(2) Nothing in this section shall require participation in job search activities, the schedule for which interferes with unsubsidized employment or participation pursuant to Section 11325.23.

(3) Job search activities may be required in excess of the limits specified in paragraph (1) on the basis of a review by the county of the recipient's performance during job search to determine whether extending the job search period would result in unsubsidized employment.

(4) A person subject to Article 3.5 (commencing with Section 11331) or subdivision (d) of Section 11320.3 shall not be required, but may be permitted, to participate in job search activities as his or her first program assignment following appraisal upon earning a high school diploma or its equivalent, if she or he has not already taken the option to complete these activities as the first program assignment following appraisal.

(b) (1) Upon the completion of job search activities, or a determination that those activities are not required in accordance with paragraph (3) of subdivision (a), the participant shall be assigned to one

or more of the activities described in Section 11322.6 as needed to attain employment.

(2) (A) The assignment to one or more of the program activities as required in paragraph (1) of this subdivision shall be based on the welfare-to-work plan developed pursuant to an assessment as described in Section 11325.4. The plan shall be based, at a minimum, on consideration of the individual's existing education level, employment experience and relevant employment skills, available program resources, and local labor market opportunities.

(B) An assessment pursuant to Section 11325.4 shall be performed upon completion of job search activities or at such time as it is determined that job search will not be beneficial.

(C) Notwithstanding subparagraphs (A) and (B), an assessment shall not be required to develop a welfare-to-work plan for a person who is participating in an approved self-initiated program pursuant to Section 11325.23 unless the county determines that an assessment is necessary to meet the hours specified in Section 11325.23.

(3) A participant who lacks basic literacy or mathematics skills, a high school diploma or general educational development certificate, or English language skills, shall be assigned to participate in adult basic education as described in subdivision (k) of Section 11322.6, as appropriate and necessary for removal of the individual's barriers to employment.

(4) Participation in activities assigned pursuant to this section may be sequential or concurrent. The county may require concurrent participation in the assigned activities if it is appropriate to the participant's abilities, consistent with the participant's welfare-to-work plan, and the activities can be concurrently scheduled.

(5) The participant has 30 days from the beginning of the initial training or education assignment in which to request a change or reassignment to another component. The county shall grant the participant's request for reassignment if another assignment is available that is consistent with the participant's welfare-to-work plan and the county determines the other assignment will readily lead to employment. This grace period shall be available only once to each participant.

(c) Any assignment or change in assignment to a program activity pursuant to this section shall be included in the welfare-to-work plan, or an amendment to the plan, as required in Section 11325.21.

(d) A participant who has not obtained unsubsidized employment upon completion of the activities in a welfare-to-work plan developed pursuant to the job search activities required by subdivision (a) and an assessment required by subdivision (b) shall be referred to reappraisal as described in Section 11326.

(e) The criteria for successful completion of an assigned education or training activity shall include regular attendance, satisfactory progress, and completion of the assignment. A person who fails or refuses to comply with program requirements for participation in the activities assigned pursuant to this section shall be subject to Sections 11327.4 and 11327.5.

(f) Except as provided in paragraph (4) of subdivision (a), this section shall not apply to individuals subject to Article 3.5 (commencing with Section 11331) during the time that article is operative.

SEC. 25. Section 11325.23 of the Welfare and Institutions Code is amended to read:

11325.23. (a) (1) Except as provided in paragraph (2), any student who, at the time he or she is required to participate under this article pursuant to Section 11320.3, is enrolled in any undergraduate degree or certificate program that leads to employment may continue in that program if he or she is making satisfactory progress in that program, the county determines that continuing in the program is likely to lead to self-supporting employment for that recipient, and the welfare-to-work plan reflects that determination.

(2) Any individual who possesses a baccalaureate degree shall not be eligible to participate under this section unless the individual is pursuing a California regular classroom teaching credential in a college or university with an approved teacher credential preparation program.

(3) (A) Subject to the limitation provided in subdivision (f), a program shall be determined to lead to employment if it is on a list of programs that the county welfare department and local education agencies or providers agree lead to employment. The list shall be agreed to annually, with the first list completed no later than January 31, 1998. By January 1, 2000, all educational providers shall report data regarding programs on the list for the purposes of the report card established under Section 15037.1 of the Unemployment Insurance Code for the programs to remain on the list.

(B) For students not in a program on the list prepared under subparagraph (A), the county shall determine if the program leads to employment. The recipient shall be allowed to continue in the program if the recipient demonstrates to the county that the program will lead to self-supporting employment for that recipient and the documentation is included in the welfare-to-work plan.

(C) If participation in educational or vocational training, as determined by the number of hours required for classroom, laboratory, or internship activities, is not at least 32 hours, the county shall require concurrent participation in work activities pursuant to subdivisions (a) to (j), inclusive, of Section 11322.6 and Section 11325.22.

(b) Participation in the self-initiated education or vocational training program shall be reflected in the welfare-to-work plan required by Section 11325.21. The welfare-to-work plan shall provide that whenever an individual ceases to participate in, refuses to attend regularly, or does not maintain satisfactory progress in the self-initiated program, the individual shall participate under this article in accordance with Section 11325.22.

(c) Any person whose previously approved self-initiated education or training program is interrupted for reasons that meet the good cause criteria specified in subdivision (f) of Section 11320.3 may resume participation in the same program if the participant maintained good standing in the program while participating and the self-initiated program continues to meet the approval criteria.

(d) Supportive services reimbursement shall be provided for any participant in a self-initiated training or education program approved under this subdivision. This reimbursement shall be provided if no other source of funding for those costs is available. Any offset to supportive services payments shall be made in accordance with subdivision (e) of Section 11323.4.

(e) Any student who, at the time he or she is required to participate under this article pursuant to Section 11320.3, has been enrolled and is making satisfactory progress in a degree or certificate program, but does not meet the criteria set forth in subdivision (a), shall have until the beginning of the next educational semester or quarter break to continue his or her educational program if he or she continues to make satisfactory progress. At the time the educational break occurs, the individual is required to participate pursuant to Section 11320.1. A recipient not expected to complete the program by the next break may continue his or her education, provided he or she transfers at the end of the current quarter or semester to a program that qualifies under that subdivision, the county determines that participation is likely to lead to self-supporting employment of the recipient, and the welfare-to-work plan reflects that determination.

(f) Any degree, certificate, or vocational program offered by a private postsecondary training provider shall not be approved under this section unless the program is either approved or exempted by the appropriate state regulatory agency and the program is in compliance with all other provisions of law.

SEC. 26. Section 11325.7 of the Welfare and Institutions Code is amended to read:

11325.7. (a) It is the intent of the Legislature in enacting this section to create a funding stream and program that assists certain recipients of aid under this chapter to receive necessary mental health services, including case management and treatment, thereby enabling

them to make the transition from welfare to work. This funding stream shall be used specifically to serve recipients in need of mental health services, and shall be accounted for and expended by each county in a manner that ensures that recipients in need of mental health services are receiving appropriate services.

(b) The county plan required by Section 10531 shall include a plan for the development of mental health employment assistance services, developed jointly by the county welfare department and the county department of mental health. The plan shall have as its goal the treatment of mental or emotional disabilities that may limit or impair the ability of a recipient to make the transition from welfare-to-work, or that may limit or impair the ability to retain employment over a long-term period. The plan shall be developed in a manner consistent with both the county's welfare-to-work program and the county's consolidated mental health Medi-Cal services plan. The county may use community based providers, as necessary, that have experience in addressing the needs of the CalWORKs population. The county, whenever possible, shall ensure that the services provided qualify for federal reimbursement of the nonstate share of Medi-Cal costs.

(c) Subject to specific expenditure authority, mental health services available under this section shall include all of the following elements:

(1) Assessment for the purpose of identifying the level of the participant's mental health needs and the appropriate level of treatment and rehabilitation for the participant.

(2) Case management, as appropriate, as determined by the county.

(3) Treatment and rehabilitation services, that shall include counseling, as necessary to overcome mental health barriers to employment and mental health barriers to retaining employment, in coordination with an individual's welfare-to-work plan.

(4) In cases where a secondary diagnosis of substance abuse is made in a person referred for mental or emotional disorders, the welfare-to-work plan shall also address the substance abuse treatment needs of the participant.

(5) A process by which the county can identify those with severe mental disabilities that may qualify them for aid under Chapter 3 (commencing with Section 12000).

(d) Any funds appropriated by the Legislature to cover the nonfederal costs of the mental health employment assistance services required by this section shall be allocated consistent with the formula used to distribute each county's CalWORKs program allocation. Each county shall report annually to the state the number of CalWORKs program recipients who received mental health services and the extent to which the allocation is sufficient to meet the need for these services as determined by the county. The State Department of Mental Health shall

develop a uniform methodology for ensuring that this allocation supplements and does not supplant current expenditure levels for mental health services for this population.

SEC. 27. Section 11326 of the Welfare and Institutions Code is amended to read:

11326. (a) The county shall conduct a reappraisal of any participant who does not obtain unsubsidized employment upon completion of all activities included in the welfare-to-work plan developed pursuant to Section 11325.4. The reappraisal shall evaluate whether there are extenuating circumstances as defined by the county that prevent the participant from obtaining employment within the local labor market area.

(b) Upon a determination that extenuating circumstances exist, the participant shall be assigned to additional activities in accordance with subdivision (b) of Section 11325.22 as the county determines to be appropriate and necessary.

(c) Upon a determination that no extenuating circumstances exist, and until this determination is reversed, the participant shall be limited to the activities in subdivisions (a), (d), (i), (*l*), and (q) of Section 11322.6. Participation in those activities shall be subject to the requirements of Section 11322.8.

SEC. 28. Section 11401.5 is added to the Welfare and Institutions Code, to read:

11401.5. (a) The county shall redetermine AFDC-FC eligibility annually and no less than required under federal law. This shall include an examination of any circumstances of a foster child that are subject to change and could effect the child's potential eligibility, including, but not limited to, deprivation, financial need, authority for placement, eligible facility, and age.

(b) At the time of the redetermination, the parent or legal guardian from whom the child was removed shall complete a statement of facts supporting continued eligibility. If the parent or legal guardian is unavailable or uncooperative, the county shall complete the statement of facts on the child's behalf.

SEC. 29. Section 11403.1 of the Welfare and Institutions Code is amended to read:

11403.1. (a) (1) The Legislature finds and declares that former foster youth are a vulnerable population at risk of homelessness, unemployment, welfare dependency, incarceration, and other adverse outcomes if they exit the foster care system unprepared to become self-sufficient. Unlike many young individuals 18 years of age who can depend on family for ongoing support while they complete postsecondary education or develop career opportunities, emancipating foster youth have their primary source of support, AFDC-Foster Care

payments, terminated at 18 years of age and are then dependent on their own resources for self-support. Some foster youth are not able to complete high school or other education or training programs due to ongoing trauma from the parental abuse or neglect and gaps in their educational attainment stemming from the original removal and subsequent changes in placement.

(2) Completion of an educational or training program is an essential, minimum skill needed by foster youth in order to be competitive in today's economy.

(3) It is therefore the intent of the Legislature to create, for counties that opt to participate, the Supportive Transitional Emancipation Program (STEP) in which emancipated foster youth shall be eligible to receive support while participating in an educational or training program, or any activity consistent with their transitional independent living plan up to 21 years of age.

(b) A person who meets all of the following conditions shall be eligible to receive aid under this section:

(1) The person either was in foster care and emancipated upon reaching the age limitations specified in Section 11401 or received aid pursuant to Kin-GAP under Article 4.5 (commencing with Section 11360) and emancipated upon reaching the age limitations specified in Section 11363.

(2) The person is participating in an educational or training program, or any activity consistent with his or her transitional independent living plan.

(3) The person is under 21 years of age.

(4) The person has emancipated from a county that is participating in the STEP program.

(c) Aid under this section shall be provided pursuant to a transitional independent living plan mutually agreed upon by the emancipated foster youth and the county welfare or probation department or independent living program coordinator, which shall be reviewed annually. The youth participating in STEP has the responsibility to inform the county of changes to the conditions in the agreed-upon plan that affect payment of aid, including changes in address, living circumstances, and the educational or training program.

(d) For purposes of this section, ''emancipated foster youth'' means a person who meets the eligibility criteria in subdivision (b).

(e) (1) In determining the amount of aid under this section, the rate provided to the youth shall be equivalent to the basic rate provided to a foster family home provider pursuant to Section 11461.

(2) If the emancipated youth remains in placement, payment shall be made to the care provider, including a transitional housing placement

program, at a rate equivalent to the basic rate provided to a foster family home provider pursuant to Section 11461.

(f) Unless otherwise provided by federal law, receipt of aid under this section shall not be considered income either for purposes of eligibility for services provided in other federal or state programs, or for grants that may be provided by an institution of higher education, including, but not limited to, Cal Grants or other grants or fee waivers.

(g) (1) Aid under this section shall be provided to eligible youth who have emancipated from a county that elects to participate under this section.

(2) Each participating county welfare department shall notify all foster youth in that county, including those receiving Kin-GAP, ages 16 to 19 years, inclusive, of the existence of the program prescribed by this section.

(h) The department shall seek any federal funds available for implementation of this section, including, but not limited to, funds available under Title IV of the Social Security Act (42 U.S.C. Sec. 601 et seq.). Implementation of this section shall not, however, be contingent upon receipt of any federal funding. The department shall seek any waiver from the Secretary of the United States Department of Health and Human Services that is necessary to implement this section.

(i) Funding shall be subject to the sharing ratios specified in subdivision (c) of Section 15200.

(j) This section shall be implemented only to the extent funds are appropriated for that purpose in the annual Budget Act.

(k) This section shall be operative on January 1, 2002.

SEC. 30. Section 11403.3 of the Welfare and Institutions Code is amended to read:

11403.3. (a) (1) Subject to subdivision (b), a transitional housing placement program, as defined in Section 11400, that provides transitional housing services to an eligible youth in a facility licensed pursuant to subdivision (a) of Section 1559.110 of the Health and Safety Code, shall be paid a monthly rate that is 75 percent of the average foster care expenditures for foster youth 16 to 18 years of age, inclusive, in group home care in the county in which the program operates.

(2) Subject to subdivision (c), a transitional housing placement program, as defined in Section 11400, that provides transitional housing services to an eligible youth in a facility certified pursuant to subdivision (e) of Section 1559.110 of the Health and Safety Code, shall be paid a monthly rate that is 70 percent of the average foster care expenditures for foster youth 16 to 18 years of age, inclusive, in group home care in the county in which the program operates.

(b) Payment to a transitional housing placement program for transitional housing services provided to a person described in paragraph

(1) of subdivision (a) of Section 11403.2 shall be subject to the following conditions:

(1) An amount equal to the base rate, as defined in subdivision (d), shall be paid for transitional housing services provided.

(2) Any additional amount payable pursuant to subdivision (a) shall be contingent on both of the following:

(A) The availability of moneys in the Transitional Housing for Foster Youth Fund established in Section 11403.4, or in the annual Budget Act, to pay the state share of cost of the additional amount.

(B) Election by the county placing the youth in the transitional housing placement program to participate in the costs of the additional amount, pursuant to subdivision (g).

(c) (1) Payment to a transitional housing placement program for transitional housing services provided pursuant to paragraph (2) of subdivision (a) of Section 11403.2 shall be subject to the following conditions:

(A) Any Supportive Transitional Emancipation Program (STEP) payment payable pursuant to Section 11403.1 shall be paid for transitional housing services provided.

(B) Any amount payable pursuant to subdivision (a) to a transitional housing placement program for services provided to a person described in paragraph (2) of subdivision (a) of Section 11403.2 shall be paid contingent on both of the following:

(i) The availability of moneys in the Transitional Housing for Foster Youth Fund established in Section 11403.4, or in the annual Budget Act, to pay the state share of cost of the payment.

(ii) Election by the county from which the person has emancipated to participate in the costs of the payment, pursuant to subdivision (g).

(2) The department may limit new participants into transitional housing placement programs if costs for this subdivision are projected to exceed moneys available in the Transitional Housing for Foster Youth Fund established in Section 11403.4, or the moneys appropriated for this purpose in the annual Budget Act.

(d) (1) As used in this section, ''base rate'' means the rate a transitional housing placement program was approved to receive on June 30, 2001. If a program commences operation after this date, the base rate shall be the rate the program would have received if it had been operational on June 30, 2001.

(2) Notwithstanding subdivision (a), no transitional housing placement program with an approved rate on July 1, 2001, shall receive a lower rate than its base rate.

(e) Any reductions in payments to a transitional housing placement program pursuant to the implementation of paragraph (2) of subdivision (b) or subparagraph (B) of paragraph (1) of subdivision (c) shall not

preclude the program from acquiring from other sources, additional funding necessary to provide program services.

(f) The department shall develop, implement, and maintain a ratesetting system schedule for transitional housing placement programs pursuant to subdivisions (a) to (d), inclusive.

(g) Funding for the rates payable under this section shall be subject to the sharing ratios specified in subdivision (c) of Section 15200.

SEC. 31. Section 11453 of the Welfare and Institutions Code is amended to read:

11453. (a) Except as provided in subdivision (c), the amounts set forth in Section 11452 and subdivision (a) of Section 11450 shall be adjusted annually by the department to reflect any increases or decreases in the cost of living. These adjustments shall become effective July 1 of each year, unless otherwise specified by the Legislature. For the 2000–01 fiscal year to the 2003–04 fiscal year, inclusive, these adjustments shall become effective October 1 of each year. The cost-of-living adjustment shall be calculated by the Department of Finance based on the changes in the California Necessities Index, which as used in this section means the weighted average changes for food, clothing, fuel, utilities, rent, and transportation for low-income consumers. The computation of annual adjustments in the California Necessities Index shall be made in accordance with the following steps:

(1) The base period expenditure amounts for each expenditure category within the California Necessities Index used to compute the annual grant adjustment are:

Food	$ 3,027
Clothing (apparel and upkeep)	406
Fuel and other utilities	529
Rent, residential	4,883
Transportation	1,757
Total	$10,602

(2) Based on the appropriate components of the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, the percentage change shall be determined for the 12-month period ending with the December preceding the year for which the cost-of-living adjustment will take effect, for each expenditure category specified in subdivision (a) within the following geographical areas: Los Angeles-Long Beach-Anaheim, San Francisco-Oakland, San Diego, and, to the extent statistically valid information is available from the Bureau of Labor Statistics, additional

geographical areas within the state which include not less than 80 percent of recipients of aid under this chapter.

(3) Calculate a weighted percentage change for each of the expenditure categories specified in subdivision (a) using the applicable weighting factors for each area used by the State Department of Industrial Relations to calculate the California Consumer Price Index (CCPI).

(4) Calculate a category adjustment factor for each expenditure category in subdivision (a) by (1) adding 100 to the applicable weighted percentage change as determined in paragraph (2) and (2) dividing the sum by 100.

(5) Determine the expenditure amounts for the current year by multiplying each expenditure amount determined for the prior year by the applicable category adjustment factor determined in paragraph (4).

(6) Determine the overall adjustment factor by dividing (1) the sum of the expenditure amounts as determined in paragraph (4) for the current year by (2) the sum of the expenditure amounts as determined in subdivision (d) for the prior year.

(b) The overall adjustment factor determined by the preceding computation steps shall be multiplied by the schedules established pursuant to Section 11452 and subdivision (a) of Section 11450 as are in effect during the month of June preceding the fiscal year in which the adjustments are to occur and the product rounded to the nearest dollar. The resultant amounts shall constitute the new schedules which shall be filed with the Secretary of State.

(c) (1) No adjustment to the maximum aid payment set forth in subdivision (a) of Section 11450 shall be made under this section for the purpose of increasing the benefits under this chapter for the 1990–91, 1991–92, 1992–93, 1993–94, 1994–95, 1995–96, 1996–97, and 1997–98 fiscal years, and through October 31, 1998, to reflect any change in the cost of living. For the 1998–99 fiscal year, the cost-of-living adjustment that would have been provided on July 1, 1998, pursuant to subdivision (a) shall be made on November 1, 1998. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 11453.05, and no further reduction shall be made pursuant to that section.

(2) No adjustment to the minimum basic standard of adequate care set forth in Section 11452 shall be made under this section for the purpose of increasing the benefits under this chapter for the 1990–91 and 1991–92 fiscal years to reflect any change in the cost of living.

(3) In any fiscal year commencing with the 2000–01 fiscal year to the 2003–04 fiscal year, inclusive, when there is any increase in tax relief pursuant to the applicable paragraph of subdivision (a) of Section 10754 of the Revenue and Taxation Code, then the increase pursuant to

subdivision (a) of this section shall occur. In any fiscal year commencing with the 2000–01 fiscal year to the 2003–04 fiscal year, inclusive, when there is no increase in tax relief pursuant to the applicable paragraph of subdivision (a) of Section 10754 of the Revenue and Taxation Code, then any increase pursuant to subdivision (a) of this section shall be suspended.

(4) Notwithstanding paragraph (3), an adjustment to the maximum aid payments set forth in subdivision (a) of Section 11450 shall be made under this section for the 2002–03 fiscal year, but the adjustment shall become effective June 1, 2003.

(d) For the 2004–05 fiscal year, the adjustment to the maximum aid payment set forth in subdivision (a) shall be suspended for three months commencing on the first day of the first month following the effective date of the act adding this subdivision.

(e) Adjustments for subsequent fiscal years pursuant to this section shall not include any adjustments for any fiscal year in which the cost of living was suspended pursuant to subdivision (c).

SEC. 32. Section 11454 of the Welfare and Institutions Code is amended to read:

11454. (a) A parent or caretaker relative shall not be eligible for aid under this chapter when he or she has received aid under this chapter or from any state under the Temporary Assistance for Needy Families program (Part A (commencing with Section 401) of Title IV of the federal Social Security Act (42 U.S.C. Sec. 601 et seq.) for a cumulative total of 60 months.

(b) No month in which aid has been received prior to January 1, 1998, shall be taken into consideration in computing the 60-month limitation provided for in subdivision (a).

(c) Subdivision (a) shall not be applicable when all parent or caretaker relatives of the aided child who are living in the home of the child meet any of the following requirements:

(1) They are 60 years of age or older.

(2) They meet one of the conditions specified in paragraph (4) or (5) of subdivision (b) of Section 11320.3.

(3) They are not included in the assistance unit.

(4) They are receiving benefits under Section 12200 or Section 12300, State Disability Insurance benefits or Workers' Compensation Temporary Disability Insurance, if the disability significantly impairs the recipient's ability to be regularly employed or participate in welfare-to-work activities.

(5) They are incapable of maintaining employment or participating in welfare-to-work activities, as determined by the county, based on the assessment of the individual and the individual has a history of participation and full cooperation in welfare-to-work activities.

SEC. 33. Section 11454.5 of the Welfare and Institutions Code is amended to read:

11454.5. (a) Any month in which the following conditions exist shall not be counted as a month of receipt of aid for the purposes of subdivision (a) of Section 11454:

(1) The recipient is exempt from participation under Article 3.2 (commencing with Section 11320) due to disability, or advanced age in accordance with paragraph (3) of subdivision (b) of Section 11320.3, or due to caretaking responsibilities that impair the recipient's ability to be regularly employed, in accordance with paragraph (4) or (5) of subdivision (b) of Section 11320.3.

(2) The recipient is eligible for, participating in, or exempt from, the Cal-Learn Program provided for pursuant to Article 3.5 (commencing with Section 11331) or is participating in another teen parent program approved by the department.

(3) The cost of the cash aid provided to the recipient for the month is fully reimbursed by child support, whether collected in that month or any subsequent month.

(4) The family is a former recipient of cash aid under this chapter and currently receives only child care, case management, or supportive services pursuant to Section 11323.2 or Article 15.5 (commencing with Section 8350) of Chapter 2 of Part 6 of the Education Code.

(5) To the extent provided by federal law, the recipient lived in Indian country, as defined by federal law, or an Alaskan native village in which at least 50 percent of the adults living in the Indian country or in the village are not employed.

(b) In cases where a lump-sum diversion payment is provided in lieu of cash aid under Section 11266.5, the month in which the payment is made or the months calculated pursuant to subdivision (f) of Section 11266.5 shall count against the limits specified in Section 11454.

SEC. 34. Section 11454.6 of the Welfare and Institutions Code is amended to read:

11454.6. (a) Notwithstanding Section 15200, to the extent that the exemptions from the time limits on aid specified in paragraphs (1), (2), (4), and (5) of subdivision (c) of Section 11454 and subdivision (a) of Section 11454.5 exceed 20 percent of the number of families aided in a county, for a period as determined by the United States Department of Health and Human Services, for purposes of measuring the hardship exemption for time limits, the county shall be responsible for the amount of aid that would otherwise have been paid through federal Temporary Assistance for Needy Families block grant funds pursuant to Section 11450, with respect to those persons exempt under either paragraphs (1), (2), (4), and (5) of subdivision (c) of Section 11454 or subdivision (a) of Section 11454.5 that exceed the 20 percent hardship exemption during

the period determined by the United States Department of Health and Human Services and provided for in federal law.

(b) Subdivision (a) shall not apply if the statewide percentage of families aided during that period is 20 percent or less.

(c) The department may determine that a county has good cause for exceeding the 20-percent limitation provided for in subdivision (a). Under this determination, the county share may be reduced or waived by the department.

(d) It is the intent of the Legislature that the steering committee as specified in Section 10544.317 review this provision to ensure that:

(1) The state does not exceed the limit on hardship exemptions as provided in federal law.

(2) Counties are not penalized for circumstances beyond their control and that statewide flexibility for allocation of the percentages is assured.

(3) Recipients will have access to the hardship exemption, regardless of their county of origin.

SEC. 35. Section 11462 of the Welfare and Institutions Code is amended to read:

11462. (a) (1) Effective July 1, 1990, foster care providers licensed as group homes, as defined in departmental regulations, including public child care institutions, as defined in Section 11402.5, shall have rates established by classifying each group home program and applying the standardized schedule of rates. The department shall collect information from group providers beginning January 1, 1990, in order to classify each group home program.

(2) Notwithstanding paragraph (1), foster care providers licensed as group homes shall have rates established only if the group home is organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400. The department shall terminate the rate effective January 1, 1993, of any group home not organized and operated on a nonprofit basis as required under subdivision (h) of Section 11400.

(3) (A) The department shall determine, consistent with the requirements of this chapter and other relevant requirements under law, the rate classification level (RCL) for each group home program on a biennial basis. Submission of the biennial rate application shall be made according to a schedule determined by the department.

(B) The department shall adopt regulations to implement this paragraph. The adoption, amendment, repeal, or readoption of a regulation authorized by this paragraph is deemed to be necessary for the immediate preservation of the public peace, health and safety, or general welfare, for purposes of Sections 11346.1 and 11349.6 of the Government Code, and the department is hereby exempted from the

requirement to describe specific facts showing the need for immediate action.

(b) A group home program shall be initially classified, for purposes of emergency regulations, according to the level of care and services to be provided using a point system developed by the department and described in the report, ''The Classification of Group Home Programs under the Standardized Schedule of Rates System,'' prepared by the State Department of Social Services, August 30, 1989.

(c) The rate for each RCL has been determined by the department with data from the AFDC-FC Group Home Rate Classification Pilot Study. The rates effective July 1, 1990, were developed using 1985 calendar year costs and reflect adjustments to the costs for each fiscal year, starting with the 1986–87 fiscal year, by the amount of the California Necessities Index computed pursuant to the methodology described in Section 11453. The data obtained by the department using 1985 calendar year costs shall be updated and revised by January 1, 1993.

(d) As used in this section, ''standardized schedule of rates'' means a listing of the 14 rate classification levels, and the single rate established for each RCL.

(e) Except as specified in paragraph (1), the department shall determine the RCL for each group home program on a prospective basis, according to the level of care and services that the group home operator projects will be provided during the period of time for which the rate is being established.

(1) (A) For new and existing providers requesting the establishment of an RCL, and for existing group home programs requesting an RCL increase, the department shall determine the RCL no later than 13 months after the effective date of the provisional rate. The determination of the RCL shall be based on a program audit of documentation and other information that verifies the level of care and supervision provided by the group home program during a period of the two full calendar months or 60 consecutive days, whichever is longer, preceding the date of the program audit, unless the group home program requests a lower RCL. The program audit shall not cover the first six months of operation under the provisional rate. Pending the department's issuance of the program audit report that determines the RCL for the group home program, the group home program shall be eligible to receive a provisional rate that shall be based on the level of care and service that the group home program proposes it will provide. The group home program shall be eligible to receive only the RCL determined by the department during the pendency of any appeal of the department's RCL determination.

(B) A group home program may apply for an increase in its RCL no earlier than two years from the date the department has determined the

group home program's rate, unless the host county, the primary placing county, or a regional consortium of counties submits to the department in writing that the program is needed in that county, that the provider is capable of effectively and efficiently operating the proposed program, and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(C) To ensure efficient administration of the department's audit responsibilities, and to avoid the fraudulent creation of records, group home programs shall make records that are relevant to the RCL determination available to the department in a timely manner. Except as provided in this section, the department may refuse to consider, for purposes of determining the rate, any documents that are relevant to the determination of the RCL that are not made available by the group home provider by the date the group home provider requests a hearing on the department's RCL determination. The department may refuse to consider, for purposes of determining the rate, the following records, unless the group home provider makes the records available to the department during the fieldwork portion of the department's program audit:

(i) Records of each employee's full name, home address, occupation, and social security number.

(ii) Time records showing when the employee begins and ends each work period, meal periods, split shift intervals, and total daily hours worked.

(iii) Total wages paid each payroll period.

(iv) Records required to be maintained by licensed group home providers under Title 22 of the California Code of Regulations that are relevant to the RCL determination.

(D) To minimize financial abuse in the startup of group home programs, when the department's RCL determination is more than three levels lower than the RCL level proposed by the group home provider, and the group home provider does not appeal the department's RCL determination, the department shall terminate the rate of a group home program 45 days after issuance of its program audit report. When the group home provider requests a hearing on the department's RCL determination, and the RCL determined by the director under subparagraph (E) is more than three levels lower than the RCL level proposed by the group home provider, the department shall terminate the rate of a group home program within 30 days of issuance of the director's decision. Notwithstanding the reapplication provisions in subparagraph (B), the department shall deny any request for a new or increased RCL from a group home provider whose RCL is terminated pursuant to this

subparagraph, for a period of no greater than two years from the effective date of the RCL termination.

(E) A group home provider may request a hearing of the department's RCL determination under subparagraph (A) no later than 30 days after the date the department issues its RCL determination. The department's RCL determination shall be final if the group home provider does not request a hearing within the prescribed time. Within 60 days of receipt of the request for hearing, the department shall conduct a hearing on the RCL determination. The standard of proof shall be the preponderance of the evidence and the burden of proof shall be on the department. The hearing officer shall issue the proposed decision within 45 days of the close of the evidentiary record. The director shall adopt, reject, or modify the proposed decision, or refer the matter back to the hearing officer for additional evidence or findings within 100 days of issuance of the proposed decision. If the director takes no action on the proposed decision within the prescribed time, the proposed decision shall take effect by operation of law.

(2) Group home programs that fail to maintain at least the level of care and services associated with the RCL upon which their rate was established shall inform the department. The department shall develop regulations specifying procedures to be applied when a group home fails to maintain the level of services projected, including, but not limited to, rate reduction and recovery of overpayments.

(3) The department shall not reduce the rate, establish an overpayment, or take other actions pursuant to paragraph (2) for any period that a group home program maintains the level of care and services associated with the RCL for children actually residing in the facility. Determinations of levels of care and services shall be made in the same way as modifications of overpayments are made pursuant to paragraph (2) of subdivision (b) of Section 11466.2.

(4) A group home program that substantially changes its staffing pattern from that reported in the group home program statement shall provide notification of this change to all counties that have placed children currently in care. This notification shall be provided whether or not the RCL for the program may change as a result of the change in staffing pattern.

(f) (1) The standardized schedule of rates for the 2002–03, 2003–04, and 2004–05 fiscal years is:

Rate Classification Level	Point Ranges	FY 2002–03, 2003–04, and 2004–05 Standard Rate
1	Under 60	$1,454
2	60– 89	1,835

3	90–119	2,210
4	120–149	2,589
5	150–179	2,966
6	180–209	3,344
7	210–239	3,723
8	240–269	4,102
9	270–299	4,479
10	300–329	4,858
11	330–359	5,234
12	360–389	5,613
13	390–419	5,994
14	420 & Up	6,371

(2) (A) For group home programs that receive AFDC-FC payments for services performed during the 2002–03, 2003–04, and 2004–05 fiscal years, the adjusted RCL point ranges below shall be used for establishing the biennial rates for existing programs, pursuant to paragraph (3) of subdivision (a) and in performing program audits and in determining any resulting rate reduction, overpayment assessment, or other actions pursuant to paragraph (2) of subdivision (e):

Rate Classification Level	Adjusted Point Ranges for the 2002–03, 2003–04, and 2004–05 Fiscal Years
1	Under 54
2	54– 81
3	82–110
4	111–138
5	139–167
6	168–195
7	196–224
8	225–253
9	254–281
10	282–310
11	311–338
12	339–367
13	368–395
14	396 & Up

(B) Notwithstanding subparagraph (A), foster care providers operating group homes during the 2002–03, 2003–04, and 2004–05 fiscal years shall remain responsible for ensuring the health and safety

of the children placed in their programs in accordance with existing applicable provisions of the Health and Safety Code and community care licensing regulations, as contained in Title 22 of the Code of California Regulations.

(C) Subparagraph (A) shall not apply to program audits of group home programs with provisional rates established pursuant to paragraph (1) of subdivision (e). For those program audits, the RCL point ranges in paragraph (1) shall be used.

(g) (1) (A) For the 1999–2000 fiscal year, the standardized rate for each RCL shall be adjusted by an amount equal to the California Necessities Index computed pursuant to the methodology described in Section 11453. The resultant amounts shall constitute the new standardized schedule of rates, subject to further adjustment pursuant to subparagraph (B).

(B) In addition to the adjustment in subparagraph (A), commencing January 1, 2000, the standardized rate for each RCL shall be increased by 2.36 percent, rounded to the nearest dollar. The resultant amounts shall constitute the new standardized schedule of rates.

(2) Beginning with the 2000–01 fiscal year, the standardized schedule of rates shall be adjusted annually by an amount equal to the CNI computed pursuant to Section 11453, subject to the availability of funds. The resultant amounts shall constitute the new standardized schedule of rates.

(3) Effective January 1, 2001, the amount included in the standard rate for each Rate Classification Level for the salaries, wages, and benefits for staff providing child care and supervision or performing social work activities, or both, shall be increased by 10 percent. This additional funding shall be used by group home programs solely to supplement staffing, salaries, wages, and benefit levels of staff specified in this paragraph. The standard rate for each RCL shall be recomputed using this adjusted amount and the resultant rates shall constitute the new standardized schedule of rates. The department may require a group home receiving this additional funding to certify that the funding was utilized in accordance with the provisions of this section.

(h) The standardized schedule of rates pursuant to subdivisions (f) and (g) shall be implemented as follows:

(1) Any group home program that received an AFDC-FC rate in the prior fiscal year at or above the standard rate for the RCL in the current fiscal year shall continue to receive that rate.

(2) Any group home program that received an AFDC-FC rate in the prior fiscal year below the standard rate for the RCL in the current fiscal year shall receive the RCL rate for the current year.

(i) (1) The department shall not establish a rate for a new program of a new or existing provider unless the provider submits a

recommendation from the host county, the primary placing county, or a regional consortium of counties that the program is needed in that county; that the provider is capable of effectively and efficiently operating the program; and that the provider is willing and able to accept AFDC-FC children for placement who are determined by the placing agency to need the level of care and services that will be provided by the program.

(2) The department shall encourage the establishment of consortia of county placing agencies on a regional basis for the purpose of making decisions and recommendations about the need for, and use of, group home programs and other foster care providers within the regions.

(3) The department shall annually conduct a county-by-county survey to determine the unmet placement needs of children placed pursuant to Section 300 and Section 601 or 602, and shall publish its findings by November 1 of each year.

(j) The department shall develop regulations specifying ratesetting procedures for program expansions, reductions, or modifications, including increases or decreases in licensed capacity, or increases or decreases in level of care or services.

(k) (1) For the purpose of this subdivision, ''program change'' means any alteration to an existing group home program planned by a provider that will increase the RCL or AFDC-FC rate. An increase in the licensed capacity or other alteration to an existing group home program that does not increase the RCL or AFDC-FC rate shall not constitute a program change.

(2) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the rate for a group home program shall not increase, as the result of a program change, from the rate established for the program effective July 1, 2000, and as adjusted pursuant to subparagraph (B) of paragraph (1) of subdivision (g), except as provided in paragraph (3).

(3) (A) For the 1998–99, 1999–2000, and 2000–01 fiscal years, the department shall not establish a rate for a new program of a new or existing provider or approve a program change for an existing provider that either increases the program's RCL or AFDC-FC rate, or increases the licensed capacity of the program as a result of decreases in another program with a lower RCL or lower AFDC-FC rate that is operated by that provider, unless both of the following conditions are met.

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The county determines that there is no increased cost to the General Fund.

(B) Notwithstanding subparagraph (A), the department may grant a request for a new program or program change, not to exceed 25 beds, statewide, if both of the following conditions are met:

(i) The licensee obtains a letter of recommendation from the host county, primary placing county, or regional consortium of counties regarding the proposed program change or new program.

(ii) The department determines that the new program or program change will result in a reduction of referrals to state hospitals during the 1998–99 fiscal year.

(*l*) General unrestricted or undesignated private charitable donations and contributions made to charitable or nonprofit organizations shall not be deducted from the cost of providing services pursuant to this section. The donations and contributions shall not be considered in any determination of maximum expenditures made by the department.

(m) The department shall, by October 1 each year, commencing October 1, 1992, provide the Joint Legislative Budget Committee with a list of any new departmental requirements established during the previous fiscal year concerning the operation of group homes, and of any unusual, industrywide increase in costs associated with the provision of group care that may have significant fiscal impact on providers of group homes care. The committee may, in fiscal year 1993–94 and beyond, use the list to determine whether an appropriation for rate adjustments is needed in the subsequent fiscal year.

SEC. 36. Section 11462.06 of the Welfare and Institutions Code is amended to read:

11462.06. (a) For purposes of the administration of this article, including the setting of group home rates, the department shall deem the reasonable costs of leases for shelter care for foster children to be allowable costs. Reimbursement of shelter costs shall not exceed 12 percent of the fair market value of owned, leased, or rented buildings, including any structures, improvements, edifices, land, grounds, and other similar property that is owned, leased, or rented by the group home and that is used for group home programs and activities, exclusive of idle capacity and capacity used for nongroup home programs and activities. Shelter costs shall be considered reasonable in relation to the fair market value limit as described in subdivision (b).

(b) For purposes of this section, fair market value of leased property shall be determined by either of the following methods, as chosen by the provider:

(1) The market value shown on the last tax bill for the cost reporting period.

(2) The market value determined by an independent appraisal. The appraisal shall be performed by a qualified, professional appraiser who, at a minimum, meets standards for appraisers as specified in Chapter 6.5

(commencing with Section 3500) of Title 10 of the California Code of Regulations. The appraisal shall not be deemed independent if performed under a less-than-arms-length agreement, or if performed by a person or persons employed by, or under contract with, the group home for purposes other than performing appraisals, or by a person having a material interest in any group home which receives foster care payments. If the department believes an appraisal does not meet these standards, the department shall give its reasons in writing to the provider and provide an opportunity for appeal.

(c) (1) The department may adopt emergency regulations in order to implement this section, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The adoption of emergency regulations pursuant to this section shall be deemed to be an emergency and considered by the Office of Administrative Law as necessary for the immediate preservation of the public peace, health and safety, or general welfare.

(3) Emergency regulations adopted pursuant to this section shall be exempt from the review and approval of the Office of Administrative Law.

(4) 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.

(d) (1) Commencing July 1, 2003, any group home provider with a self-dealing lease transaction for shelter costs, as defined in Section 5233 of the Corporations Code, shall not be eligible for an AFDC-FC rate.

(2) Notwithstanding paragraph (1), providers that received an approval letter for a self-dealing lease transaction for shelter costs during the 2002–03 fiscal year from the Charitable Trust Section of the Department of Justice shall be eligible to continue to receive an AFDC-FC rate until the date that the lease expires, or is modified, extended, or terminated, whichever occurs first. These providers shall be ineligible to receive an AFDC-FC rate after that date if they have entered into any self-dealing lease transactions for group home shelter costs.

SEC. 37. Section 11466.21 of the Welfare and Institutions Code is amended to read:

11466.21. (a) In accordance with subdivision (b), as a condition to receive an AFDC-FC rate for a group home program or a foster family agency program that provides treatment services, the following shall apply:

(1) Any provider who receives three hundred thousand dollars ($300,000) or more in combined federal funds shall arrange to have a financial audit conducted on an annual basis, and shall submit the annual

financial audit to the department in accordance with regulations adopted by the department.

(2) Any provider who receives less than three hundred thousand dollars ($300,000) in combined federal funds shall submit to the department a financial audit on its most recent fiscal period at least once every three years. The department shall provide timely notice to the providers of the date that submission of the financial audit is required. That date of submission of the financial audit shall be no later than six months from the close of the provider's most recent fiscal period.

(3) The scope of the financial audit shall include all of the programs and activities operated by the provider and shall not be limited to those funded in whole or in part by the AFDC-FC program. The financial audits shall include, but not be limited to, an evaluation of the accounting and control systems of the provider.

(4) The provider shall have its financial audit conducted by certified public accountants or by state-licensed public accountants who have no direct or indirect relationship with the functions or activities being audited, or with the provider, its board of directors, officers, or staff.

(5) The provider shall have its financial audits conducted in accordance with Government Auditing Standards issued by the Comptroller General of the United States and in compliance with generally accepted accounting principles applicable to private entities organized and operated on a nonprofit basis.

(6) (A) Each provider shall have the flexibility to define the calendar months included in its fiscal year.

(B) A provider may change the definition of its fiscal year. However, the financial audit conducted following the change shall cover all of the months since the last audit, even though this may cover a period that exceeds 12 months.

(b) (1) In accordance with subdivision (a), as a condition to receive an AFDC-FC rate that becomes effective on or after July 1, 2000, a provider shall submit a copy of its most recent financial audit report, except as provided in paragraph (3).

(2) The department shall terminate the rate of a provider who fails to submit a copy of its most recent financial audit pursuant to subdivision (a). A terminated rate shall only be reinstated upon the provider's submission of an acceptable financial audit.

(3) Effective July 1, 2000, a new provider that has been incorporated for fewer than 12 calendar months shall not be required to submit a copy of a financial audit to receive an AFDC-FC rate for a new program. The financial audit shall be conducted on the provider's next full fiscal year of operation. The provider shall submit the financial audit to the department in accordance with subdivision (a).

(c) The department shall implement this section through the adoption of emergency regulations.

SEC. 38. Section 11486.3 is added to the Welfare and Institutions Code, to read:

11486.3. (a) The department, in consultation with system stakeholders, including county welfare departments, shall examine the CalWORKs sanction policy, its implementation, and effect on work participation, including but not limited to all of the following:

(1) The characteristics of the persons being sanctioned.

(2) The reason participants are being sanctioned.

(3) The length of time in sanctioned status.

(4) Positive and negative sanction outcomes.

(5) County variances in sanction policies, rates, and outcomes.

(6) The relationship between sanction rates and work participation.

(7) The impact of sanctions on families and their ability to become self-sufficient.

(8) Adequacy of procedures to resolve noncompliance prior to the implementation of sanctions.

(b) The department shall develop recommendations to improve the effectiveness of sanctions in achieving participant compliance, assisting families in becoming self-sufficient, and other desired program outcomes.

(c) The department shall report its findings and recommendations to the appropriate fiscal and policy committees of the Legislature by April 1, 2005.

SEC. 39. Section 12201 of the Welfare and Institutions Code is amended to read:

12201. (a) Except as provided in subdivision (d), the payment schedules set forth in Section 12200 shall be adjusted annually to reflect any increases or decreases in the cost of living. Except as provided in subdivision (e), these adjustments shall become effective January 1 of each year. The cost-of-living adjustment shall be based on the changes in the California Necessities Index, which as used in this section shall be the weighted average of changes for food, clothing, fuel, utilities, rent, and transportation for low-income consumers. The computation of annual adjustments in the California Necessities Index shall be made in accordance with the following steps:

(1) The base period expenditure amounts for each expenditure category within the California Necessities Index used to compute the annual grant adjustment are:

Food	$ 3,027
Clothing (apparel and upkeep)	406
Fuel and other utilities	529
Rent, residential	4,883
Transportation	1,757
Total	$10,602

(2) Based on the appropriate components of the Consumer Price Index for All Urban Consumers, as published by the United States Department of Labor, Bureau of Labor Statistics, the percentage change shall be determined for the 12-month period which ends 12 months prior to the January in which the cost-of-living adjustment will take effect, for each expenditure category specified in paragraph (1) within the following geographical areas: Los Angeles-Long Beach-Anaheim, San Francisco-Oakland, San Diego, and, to the extent statistically valid information is available from the Bureau of Labor Statistics, additional geographical areas within the state which include not less than 80 percent of recipients of aid under this chapter.

(3) Calculate a weighted percentage change for each of the expenditure categories specified in subdivision (a) using the applicable weighting factors for each area used by the State Department of Industrial Relations to calculate the California Consumer Price Index (CCPI).

(4) Calculate a category adjustment factor for each expenditure category in paragraph (1) by (1) adding 100 to the applicable weighted percentage change as determined in paragraph (2) and (2) dividing the sum by 100.

(5) Determine the expenditure amounts for the current year by multiplying each expenditure amount determined for the prior year by the applicable category adjustment factor determined in paragraph (4).

(6) Determine the overall adjustment factor by dividing (1) the sum of the expenditure amounts as determined in paragraph (4) for the current year by (2) the sum of the expenditure amounts as determined in paragraph (4) for the prior year.

(b) The overall adjustment factor determined by the preceding computational steps shall be multiplied by the payment schedules established pursuant to Section 12200 as are in effect during the month of December preceding the calendar year in which the adjustments are to occur, and the product rounded to the nearest dollar. The resultant amounts shall constitute the new schedules for the categories given under subdivisions (a), (b), (c), (d), (e), (f), and (g) of Section 12200, and shall be filed with the Secretary of State. The amount as set forth in

subdivision (h) of Section 12200 shall be adjusted annually pursuant to this section in the event that the secretary agrees to administer payment under that subdivision. The payment schedule for subdivision (i) of Section 12200 shall be computed as specified, based on the new payment schedules for subdivisions (a), (b), (c), and (d) of Section 12200.

(c) The department shall adjust any amounts of aid under this chapter to insure that the minimum level required by the Social Security Act in order to maintain eligibility for funds under Title XIX of that act is met.

(d) (1) No adjustment shall be made under this section for the 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, and 2004 calendar years to reflect any change in the cost of living. Elimination of the cost-of-living adjustment pursuant to this paragraph shall satisfy the requirements of Section 12201.05, and no further reduction shall be made pursuant to that section.

(2) Any cost-of-living adjustment granted under this section for any calendar year shall not include adjustments for any calendar year in which the cost of living was suspended pursuant to paragraph (1).

(e) For the 2003 calendar year, the adjustment required by this section shall become effective June 1, 2003.

(f) For the 2005 calendar year, the adjustment required by this section shall become effective April 1, 2005.

SEC. 40. Section 12300 of the Welfare and Institutions Code is amended to read:

12300. (a) The purpose of this article is to provide in every county in a manner consistent with this chapter and the annual Budget Act those supportive services identified in this section to aged, blind, or disabled persons, as defined under this chapter, who are unable to perform the services themselves and who cannot safely remain in their homes or abodes of their own choosing unless these services are provided.

(b) Supportive services shall include domestic services and services related to domestic services, heavy cleaning, personal care services, accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites, yard hazard abatement, protective supervision, teaching and demonstration directed at reducing the need for other supportive services, and paramedical services which make it possible for the recipient to establish and maintain an independent living arrangement.

(c) Personal care services shall mean all of the following:

(1) Assistance with ambulation.

(2) Bathing, oral hygiene, and grooming.

(3) Dressing.

(4) Care and assistance with prosthetic devices.

(5) Bowel, bladder, and menstrual care.

(6) Repositioning, skin care, range of motion exercises, and transfers.

(7) Feeding and assurance of adequate fluid intake.

(8) Respiration.

(9) Assistance with self-administration of medications.

(d) Personal care services are available if these services are provided in the beneficiary's home and other locations as may be authorized by the director. Among the locations that may be authorized by the director under this paragraph is the recipient's place of employment if all of the following conditions are met:

(1) The personal care services are limited to those that are currently authorized for a recipient in the recipient's home and those services are to be utilized by the recipient at the recipient's place of employment to enable the recipient to obtain, retain, or return to work. Authorized services utilized by the recipient at the recipient's place of employment shall be services that are relevant and necessary in supporting and maintaining employment. However, workplace services shall not be used to supplant any reasonable accommodations required of an employer by the Americans with Disabilities Act (42 U.S.C. Sec. 12101 et seq.; ADA) or other legal entitlements or third-party obligations.

(2) The provision of personal care services at the recipient's place of employment shall be authorized only to the extent that the total hours utilized at the workplace are within the total personal care services hours authorized for the recipient in the home. Additional personal care services hours may not be authorized in connection with a recipient's employment.

(e) Where supportive services are provided by a person having the legal duty pursuant to the Family Code to provide for the care of his or her child who is the recipient, the provider of supportive services shall receive remuneration for the services only when the provider leaves full-time employment or is prevented from obtaining full-time employment because no other suitable provider is available and where the inability of the provider to provide supportive services may result in inappropriate placement or inadequate care.

These providers shall be paid only for the following:

(1) Services related to domestic services.

(2) Personal care services.

(3) Accompaniment by a provider when needed during necessary travel to health-related appointments or to alternative resource sites.

(4) Protective supervision only as needed because of the functional limitations of the child.

(5) Paramedical services.

(f) To encourage maximum voluntary services, so as to reduce governmental costs, respite care shall also be provided. Respite care is temporary or periodic service for eligible recipients to relieve persons who are providing care without compensation.

(g) A person who is eligible to receive a service or services under an approved federal waiver authorized pursuant to Section 14132.951, or a person who is eligible to receive a service or services authorized pursuant to Section 14132.95, shall not be eligible to receive the same service or services pursuant to this article. In the event that the waiver authorized pursuant to Section 14132.951, as approved by the federal government, does not extend eligibility to all persons otherwise eligible for services under this article, or does not cover a service or particular services, or does not cover the scope of a service that a person would otherwise be eligible to receive under this article, those persons who are not eligible for services, or for a particular service under the waiver or Section 14132.95 shall be eligible for services under this article.

(h) (1) All services provided pursuant to this article shall be equal in amount, scope, and duration to the same services provided pursuant to Section 14132.95, including any adjustments that may be made to those services pursuant to subdivision (e) of Section 14132.95.

(2) Notwithstanding any other provision of this article, the rate of reimbursement for in-home supportive services provided through any mode of service shall not exceed the rate of reimbursement established under subdivision (j) of Section 14132.95 for the same mode of service unless otherwise provided in the annual Budget Act.

(3) The maximum number of hours available under Section 14132.95, Section 14132.951, and this section, combined, shall be 283 hours per month. Any recipient of services under this article shall receive no more than the applicable maximum specified in Section 12303.4.

SEC. 41. Section 12301.1 of the Welfare and Institutions Code is amended to read:

12301.1. (a) The department shall adopt regulations establishing a uniform range of services available to all eligible recipients based upon individual needs. The availability of services under these regulations is subject to the provisions of Section 12301 and county plans developed pursuant to Section 12302.

(b) The county welfare department shall assess each recipient's continuing need for supportive services at varying intervals as necessary, but at least once every 12 months.

(c) (1) Notwithstanding subdivision (b), at the county's option, assessments may be extended, on a case-by-case basis, for up to six months beyond the regular 12-month period, provided that the county documents that all of the following conditions exist:

(A) The recipient has had at least one reassessment since the initial program intake assessment.

(B) The recipient's living arrangement has not changed since the last annual reassessment and the recipient lives with others, or has regular meaningful contact with persons other than his or her service provider.

(C) The recipient or, if the recipient is a minor, his or her parent or legal guardian, or if incompetent, his or her conservator, is able to satisfactorily direct the recipient's care.

(D) There has been no known change in the recipient's supportive service needs within the previous 24 months.

(E) No reports have been made to, and there has been no involvement of, an adult protective services agency or agencies since the county last assessed the recipient.

(F) The recipient has not had a change in provider or providers for at least six months.

(G) The recipient has not reported a change in his or her need for supportive services that requires a reassessment.

(H) The recipient has not been hospitalized within the last three months.

(2) If some, but not all, of the conditions specified in paragraph (1) of subdivision (c) are met, the county may consider other factors in determining whether an extended assessment interval is appropriate, including, but not limited to, involvement in the recipient's care of a social worker, case manager, or other similar representative from another human services agency, such as a regional center or county mental health program, or communications, or other instructions from a physician or other licensed health care professional that the recipient's medical condition is unlikely to change.

(3) A county may reassess a recipient's need for services at a time interval of less than 12 months from a recipient's initial intake or last assessment if the county social worker has information indicating that the recipient's need for services is expected to decrease in less than 12 months.

(d) A county shall assess a recipient's need for supportive services any time that the recipient notifies the county of a need to adjust the supportive services hours authorized, or when there are other indications or expectations of a change in circumstances affecting the recipient's need for supportive services.

(e) (1) Notwithstanding 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, until emergency regulations are filed with the Secretary of State, the department may implement this section through all-county letters or similar instructions from the director. The department shall adopt emergency regulations implementing this section no later than September 30, 2005, unless notification of a delay is made to the Chair of the Joint Legislative Budget Committee prior to that date. The notification shall include the reason for the delay, the current status of the emergency regulations, a date by which the emergency regulations

shall be adopted, and a statement of need to continue use of all-county letters or similar instructions. Under no circumstances shall the adoption of emergency regulations be delayed, or the use of all-county letters or similar instructions be extended, beyond June 30, 2006.

(2) The adoption of regulations implementing this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by 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 shall remain in effect for no more than 180 days by which time final regulations shall be adopted. The department shall seek input from the entities listed in Section 12305.72 when developing all-county letters or similar instructions and the regulations.

SEC. 42. Section 12301.2 of the Welfare and Institutions Code is repealed.

SEC. 43. Section 12301.2 is added to the Welfare and Institutions Code, to read:

12301.2. (a) (1) The department, in consultation and coordination with county welfare departments and in accordance with Section 12305.72, shall establish and implement statewide hourly task guidelines and instructions to provide counties with a standard tool for consistently and accurately assessing service needs and authorizing service hours to meet those needs.

(2) The guidelines shall specify a range of time normally required for each supportive service task necessary to ensure the health, safety, and independence of the recipient. The guidelines shall also provide criteria to assist county workers to determine when an individual's service need falls outside the range of time provided in the guidelines.

(3) In establishing the guidelines the department shall consider, among other factors, adherence to universal precautions, existing utilization patterns and outcomes associated with different levels of utilization, and the need to avoid cost shifting to other government program services. During the development of the guidelines the department may seek advice from health professionals such as public health nurses or physical or occupational therapists.

(b) A county shall use the statewide hourly task guidelines when conducting an individual assessment or reassessment of an individual's need for supportive services.

(c) Subject to the limits imposed by Section 12303.4, counties shall approve an amount of time different from the guideline amount whenever the individual assessment indicates that the recipient's needs require an amount of time that is outside the range provided for in the

guidelines. Whenever task times outside the range provided in the guidelines are authorized the county shall document the need for the authorized service level.

(d) The department shall adopt regulations to implement this section by June 30, 2006. The department shall seek input from the entities listed in Section 12305.72 when developing the regulations.

SEC. 44. Section 12301.21 is added to the Welfare and Institutions Code, immediately following Section 12301.2, to read:

12301.21. (a) The department shall, in consultation and coordination with the county welfare departments and in accordance with Section 12305.72, develop for statewide use a standard form on which to obtain certification by a physician or other appropriate medical professional as determined by the department of a person's need for protective supervision.

(b) At the time of an initial assessment at which a recipient's potential need for protective supervision has been identified, the county shall request that a person requesting protective supervision submit the certification to the county. The county shall use the certification in conjunction with other pertinent information to assess the person's need for protective supervision. The certification submitted by the person shall be considered as one indicator of the need for protective supervision, but shall not be determinative. In the event that the person fails to submit the certification, the county shall make its determination of need based upon other available evidence.

(c) At the time of reassessment of a person receiving authorized protective supervision, the county shall determine the need to obtain a new certification. The county may request another certification from a recipient if determined necessary. The county shall document the basis for its determination in the recipient's case file.

(d) (1) Notwithstanding 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, until emergency regulations are filed with the Secretary of State, the department may implement this section through all-county letters or similar instructions from the director. The department shall adopt emergency regulations implementing this chapter no later than September 30, 2005, unless notification of a delay is made to the Chair of the Joint Legislative Budget Committee prior to that date. The notification shall include the reason for the delay, the current status of the emergency regulations, a date by which the emergency regulations shall be adopted, and a statement of need to continue use of all-county letters or similar instructions. Under no circumstances shall the adoption of emergency regulations be delayed, or the use of all-county letters or similar instructions be extended, beyond June 30, 2006.

(2) The adoption of regulations implementing this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by 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 shall remain in effect for no more than 180 days by which time final regulations shall be promulgated. The department shall seek input from the entities listed in Section 12305.72 when developing all-county letters or similar instructions and the regulations.

SEC. 45. Section 12305.7 is added to the Welfare and Institutions Code, to read:

12305.7. The department shall perform all of the following activities:

(a) Beginning in the 2004–05 fiscal year, and in each subsequent fiscal year, the department in consultation with the State Department of Health Services and the county welfare departments shall design and conduct an error rate study to estimate the extent of payment and service authorization errors and fraud in the provision of supportive services. The error rate study findings shall be used to prioritize and direct state and county fraud detection and quality improvement efforts. The State Department of Health Services shall provide technical assistance and guidance for the error rate studies as requested by the department.

(b) (1) The department and the State Department of Health Services shall conduct automated data matches to compare Medi-Cal paid claims and third-party liability data with supportive services paid service hours data to identify potential overpayments, duplicate payments, alternative payment sources for supportive services, and other potential supportive services delivery discrepancies, including but not limited to, receipt of supportive services by a recipient on the same day that other potentially duplicative Medi-Cal services are received. Relevant data match findings shall be transmitted to the counties, or to the appropriate state entity, for action.

(2) The department, in consultation with the county welfare departments and the State Department of Health Services, shall determine, define, and issue instructions to the counties describing the roles and responsibilities of the department, the State Department of Health Services, and counties for resolving data match discrepancies requiring followup, defining the necessary actions that will be taken to resolve them, and the process for exchange of information pertaining to the findings and disposition of data match discrepancies.

(c) The department shall develop methods for verifying the receipt of supportive services by program recipients. In developing the specified

methods the department shall obtain input from program stakeholders as provided in Section 12305.72. The department shall, in consultation with the county welfare departments, also determine, define, and issue instructions describing the roles and responsibilities of the department and the county welfare departments for evaluating and responding to identified problems and discrepancies.

(d) The department shall make available on its Internet Web site the regulations, all-county letters, approved forms, and training curricula developed and officially issued by the department to implement the items described in Section 12305.72. The department shall inform supportive services providers, recipients, and the general public about the availability of these items and of the Medi-Cal toll free fraud hotline and Web site for reporting suspected fraud or abuse in the provision or receipt of supportive services.

(e) The department shall, in consultation with counties and in accordance with Section 12305.72, develop a standardized curriculum, training materials, and work aids, and operate an ongoing, statewide training program on the supportive services uniformity system for county workers, managers, quality assurance staff, state hearing officers, and public authority or nonprofit consortium staff, to the extent a county operates a public authority or nonprofit consortium. The training shall be expanded to include variable assessment intervals, statewide hourly task guidelines, and use of the protective supervision medical certification form as the development of each of these components is completed. Training shall be scheduled and provided at sites throughout the state. The department may obtain a qualified vendor to assist in the development of the training and to conduct the training program. The design of the training program shall provide reasonable flexibility to allow counties to use their preferred training modalities to educate their supportive services staff in this subject matter.

(f) The department shall, in conjunction with the counties, develop protocols and procedures for monitoring county quality assurance programs. The monitoring may include onsite reviews of county quality assurance activities. The focus of the established monitoring protocols and procedures shall include determining the extent to which counties are fulfilling their quality assurance responsibilities and county quality assurance staff are correctly applying the uniformity system in reviewing supportive services cases for consistent, appropriate, and accurate service need assessments. The department and the county welfare departments shall also develop the protocols and procedures under which the department will report its monitoring findings to a county, disagreements over the findings are resolved, to the extent possible, and the county, the State Department of Health Services, and the department will follow up on the findings.

(g) The department shall conduct a review of program regulations in effect on the date of enactment of this section and shall revise the regulations as necessary to conform to the statutory changes that have occurred since the regulations were initially promulgated and to conform to federally authorized program changes.

SEC. 46. Section 12305.71 is added to the Welfare and Institutions Code, immediately following Section 12305.7, to read:

12305.71. Counties shall perform the following quality assurance activities:

(a) Establish a dedicated, specialized unit or function to ensure quality assurance and program integrity, including fraud detection and prevention, in the provision of supportive services.

(b) Perform routine, scheduled reviews of supportive services cases, to ensure that caseworkers appropriately apply the supportive services uniformity system and other supportive services rules and policies for assessing recipients' need for services to the end that there are accurate assessments of needs and hours. Counties may consult with state quality assurance staff for technical assistance and shall cooperate with state monitoring of the county's quality assurance activities and findings.

(c) The department and the county welfare departments shall develop policies, procedures, implementation timelines, and instructions under which county quality assurance programs will perform the following activities:

(1) Receiving, resolving, and responding appropriately to claims data match discrepancies or other state level quality assurance and program integrity information that indicates potential overpayments to providers or recipients or third-party liability for supportive services.

(2) Implementing procedures to identify potential sources of third-party liability for supportive services.

(3) Monitoring the delivery of supportive services in the county to detect and prevent potential fraud by providers, recipients, and others and maximize the recovery of overpayments from providers or recipients.

(4) Informing supportive services providers and recipients, and the public that suspected fraud in the provision or receipt of supportive services can be reported by using the toll-free Medi-Cal fraud telephone hotline and Internet Web site.

(d) Develop a schedule, beginning July 1, 2005, under which county quality assurance staff shall periodically perform targeted quality assurance studies.

(e) In accordance with protocols developed by the department and county welfare departments, conduct joint case review activities with state quality assurance staff, including random postpayment paid claim reviews to ensure that payments to providers were valid and were

associated with existing program recipients; identify, refer to, and work with appropriate agencies in investigation, administrative action, or prosecution of instances of fraud in the provision of supportive services. The protocols shall consider the relative priorities of the activities required pursuant to this section and available resources.

SEC. 47. Section 12305.72 is added to the Welfare and Institutions Code, to read:

12305.72. The department shall convene periodic meetings in which supportive services recipients, providers, advocates, IHSS provider representatives, organizations representing recipients, counties, public authorities, nonprofit consortia, and other interested stakeholders may receive information and have the opportunity to provide input to the department regarding the quality assurance, program integrity, and program consistency efforts required by Sections 12305.7 and 12305.71. The program development activities that shall be covered in these meetings shall include, but are not limited to:

(a) Implementation of variable assessment intervals as provided in Section 12301.1.

(b) Development and implementation of statewide hourly supportive services task guidelines as provided in Section 12301.2.

(c) Development and implementation of a standardized medical certification form for protective supervision, as provided for in Section 12301.21.

(d) The development and implementation of statewide training for county staff, as specified in subdivision (e) of Section 12305.7, on various subjects relating to the provision of supportive services including, but not limited to, the uniformity system, variable assessment intervals, statewide hourly task guidelines, and the standardized medical certification form for protective supervision services.

(e) The development and implementation of approaches to verifying receipt of program services by program recipients.

(f) Alternatives to requiring that a full reassessment be completed in order to authorize a temporary increase in supportive services hours following the discharge of a recipient from a medical facility.

SEC. 48. Section 12305.8 is added to the Welfare and Institutions Code, to read:

12305.8. The following definitions apply for purposes of this article:

(a) ''Fraud'' means the 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. Fraud also includes any act that constitutes fraud under applicable federal or state law.

(b) ''Overpayment'' means the amount paid by the department or the State Department of Health Services to a provider or recipient, which is in excess of the amount for services authorized or furnished pursuant to this article.

(c) Notwithstanding any other provision of law, ''health care benefits'' includes supportive services, for purposes of subdivision (a) of Section 550 of the Penal Code.

SEC. 49. Section 12305.81 is added to the Welfare and Institutions Code, immediately following Section 12305.8, to read:

12305.81. (a) Notwithstanding any other provision of law, a person shall not be eligible to provide or receive payment for providing supportive services for 10 years following a conviction for, or incarceration following a conviction for, fraud against a government health care or supportive services program, including Medicare, Medicaid, or services provided under Title V, Title XX, or Title XXI of the federal Social Security Act or a violation of subdivision (a) of Section 273a of the Penal Code, or Section 368 of the Penal Code, or similar violations in another jurisdiction. The department and the State Department of Health Services shall develop a provider enrollment form that each person seeking to provide supportive services shall complete, sign under penalty of perjury, and submit to the county. The form shall contain statements to the following effect:

(1) A person who, in the last 10 years, has been convicted for, or incarcerated following conviction for, fraud against a government health care or supportive services program is not eligible to be enrolled as a provider or to receive payment for providing supportive services.

(2) An individual who, in the last 10 years, has been convicted for, or incarcerated following conviction for, a violation of subdivision (a) of Section 273a of the Penal Code or Section 368 of the Penal Code, or similar violations in another jurisdiction, is not eligible to be enrolled as a provider or to receive payment for providing supportive services.

(3) A statement declaring that the person has not, in the last 10 years, been convicted or incarcerated following conviction for a crime involving fraud against a government health care or supportive services program.

(4) A statement declaring that he or she has not, in the last 10 years, been convicted for, or incarcerated following conviction for, a violation of subdivision (a) of Section 273a of the Penal Code or Section 368 of the Penal Code, or similar violations in another jurisdiction.

(5) The person agrees to reimburse the state for any overpayment paid to the person as determined in accordance with Section 12305.83, and that the amount of any overpayment, individually or in the aggregate, may be deducted from any future warrant to that person for services

provided to any recipient of supportive services, as authorized in Section 12305.83.

(b) The department shall include the text of subdivision (a) of Section 273a of the Penal Code and Section 368 of the Penal Code on the provider enrollment form.

(c) A public authority or nonprofit consortium that is notified by the department or the State Department of Health Services that a supportive services provider is ineligible to receive payments under this chapter or under Medi-Cal law shall exclude that provider from its registry.

(d) A public authority or nonprofit consortium that determines that a registry provider is not eligible to provide supportive services based on the requirements of subdivision (a) shall report that finding to the department.

SEC. 50. Section 12305.82 is added to the Welfare and Institutions Code, to read:

12305.82. (a) In addition to its existing authority under the Medi-Cal program, the State Department of Health Services shall have the authority to investigate fraud in the provision or receipt of supportive services. Counties shall refer instances of suspected fraud in the provision or receipt of supportive services to the State Department of Health Services, which shall investigate all suspected fraud. The department, the State Department of Health Services, and county quality assurance staff shall work together as appropriate to coordinate activities to detect and prevent fraud by supportive services providers and recipients in accordance with federal and state laws and regulations, including applicable due process requirements, to take appropriate administrative action relating to suspected fraud in the provision or receipt of supportive services, and to refer suspected criminal offenses to appropriate law enforcement agencies for prosecution.

(b) If the State Department of Health Services concludes that there is reliable evidence that a supportive services provider has engaged in fraud in connection with the provision or receipt of supportive services, the State Department of Health Services shall notify the department, the county, and the county's public authority or nonprofit consortium, if any, of that conclusion.

SEC. 51. Section 12305.83 is added to the Welfare and Institutions Code, to read:

12305.83. (a) When it has been determined that a provider of supportive services participating under this chapter has received an overpayment that is a debt due and owing, as defined in subdivision (g) of Section 14043.1, the director or the county may, to the extent permissible under existing labor laws, recover the overpayment by offset against any amount currently due to a provider under the provisions of this chapter, Chapter 7 (commencing with Section 14000) or Chapter 8

(commencing with Section 14200) or by means of a repayment agreement executed between the provider and the director or the county, or by filing a civil action.

(b) The department, in consultation with the entities listed in Section 12305.72, shall identify, define, and develop policies, procedures, and applicable due process requirements under which overpayments to supportive services providers will be identified and recovered.

(c) If it is determined that an overpayment to a supportive services provider has occurred the county shall:

(1) Take all appropriate actions to recover the full amount of the overpayment by any combination of the following actions:

(A) Offsetting the overpayment from any future warrants to that provider for services provided to any recipient of services pursuant to subdivision (d).

(B) Entering into a negotiated repayment agreement.

(C) Filing a civil court action.

(2) If the overpayment was determined to have occurred as a result of fraud on the part of the supportive services provider, take all appropriate actions to suspend or exclude the provider as an enrolled provider and to prevent in the future any further payment of state or federal funds to the provider for up to 10 years following the conviction or the term of incarceration following the conviction for fraud.

(d) If the overpayment described in this section was determined to be the result of fraud, the full amount of the overpayment may be offset, in total, from any future warrants, as described in paragraph (1) of subdivision (c). If the overpayment is not determined to be the result of fraud the offset shall be limited to either of the following:

(1) The amounts provided for in a repayment agreement negotiated with the provider.

(2) No more than 5 percent of each warrant, for errors caused by the government and no more than 10 percent of each warrant, for errors resulting for any other reason, until the full or negotiated amount is recovered.

SEC. 52. Section 12317 is added to the Welfare and Institutions Code, to read:

12317. (a) The State Department of Social Services shall be responsible for procuring and implementing a new Case Management Information and Payroll System (CMIPS) for the In-Home Supportive Services Program and Personal Care Services Program (IHSS/PCSP). This section shall not be interpreted to transfer any of the IHSS/PCSP policy responsibilities from the State Department of Social Services or the State Department of Health Services.

(b) At a minimum, the new system shall provide case management, payroll, and management information in order to support the IHSS/PCSP, and shall do all of the following:

(1) Provide current and accurate information in order to manage the IHSS/PCSP caseload.

(2) Calculate accurate wage and benefit deductions.

(3) Provide management information to monitor and evaluate the IHSS/PCSP.

(4) Coordinate benefits information and processing with the California Medicaid Management Information System.

(c) The new system shall be consistent with current state and federal laws, shall incorporate technology that can be readily enhanced and modernized for the expected life of the system, and, to the extent possible, shall employ open architectures and standards.

(d) By August 31, 2004, the State Department of Social Services shall begin a fair and open competitive procurement for the new CMIPS. All state agencies shall cooperate with the State Department of Social Services and the California Health and Human Services Agency Data Center to expedite the procurement, design, development, implementation, and operation of the new CMIPS.

(e) The State Department of Social Services, with any necessary assistance from the State Department of Health Services, shall seek all federal approvals and waivers necessary to secure federal financial participation and system design approval of the new system.

SEC. 53. Section 12317.1 is added to the Welfare and Institutions Code, to read:

12317.1. The department may enter into interagency agreements with the State Department of Health Services to administer approved federal waivers authorized pursuant to Section 14132.951 or services provided under Section 14132.95, and to deliver waiver services in the same manner as services delivered pursuant to this article, and as authorized by Section 1396a(a)(11)(A) of Title 42 of the United States Code, which provides that California's state plan for medical assistance under the Medicaid program allows the State Department of Health Services, as the single state Medicaid agency, to ''enter into cooperative arrangements with the State agencies responsible for administering or supervising the administration of health services and vocational rehabilitation services in the State looking toward maximum utilization of such services in the provision of medical assistance under the plan.'' If an interagency agreement is entered into pursuant to this section, it shall come within the provisions of Section 14000.03.

SEC. 54. Section 12317.2 is added to the Welfare and Institutions Code, to read:

12317.2. (a) Except as set forth in subdivision (b), in the event of a conflict between the terms of the waiver approved pursuant to Section 14132.951 and any provision of this part or any regulation adopted for the purpose of implementing this part, the terms of the waiver shall control to the extent that the services are covered under the waiver. If the department determines that a conflict exists, the department shall issue updated instructions to counties for purposes of implementing necessary program changes. The department shall post a copy of, or a link to, the instructions on its Web site.

(b) The authority to waive or modify provisions of this part pursuant to this section does not include the authority to waive or modify the provisions of Section 12301.2, 12301.6, 12302.25, 12306.1, or 12309.

SEC. 55. Section 14132.95 of the Welfare and Institutions Code is amended to read:

14132.95. (a) Personal care services, when provided to a categorically needy person as defined in Section 14050.1 is a covered benefit to the extent federal financial participation is available if these services are:

(1) Provided in the beneficiary's home and other locations as may be authorized by the director subject to federal approval.

(2) Authorized by county social services staff in accordance with a plan of treatment.

(3) Provided by a qualified person.

(4) Provided to a beneficiary who has a chronic, disabling condition that causes functional impairment that is expected to last at least 12 consecutive months or that is expected to result in death within 12 months and who is unable to remain safely at home without the services described in this section.

(b) The department shall seek federal approval of a state plan amendment necessary to include personal care as a Medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of Federal Regulations. For any persons who meet the criteria specified in subdivision (a) or (p), but for whom federal financial participation is not available for a service or services under this section, eligibility for the service or services shall be determined according to the waiver authorized pursuant to Section 14132.951. If federal financial participation for the service or services is not available under this section or Section 14132.951, eligibility for the service or services shall be determined pursuant to Article 7 (commencing with Section 12300) of Chapter 3.

(c) Subdivision (a) shall not be implemented unless the department has obtained federal approval of the state plan amendment described in subdivision (b), and the Department of Finance has determined, and has informed the department in writing, that the implementation of this

section will not result in additional costs to the state relative to state appropriation for in-home supportive services under Article 7 (commencing with Section 12300) of Chapter 3, in the 1992–93 fiscal year.

(d) (1) For purposes of this section, personal care services shall mean all of the following:

(A) Assistance with ambulation.

(B) Bathing, oral hygiene and grooming.

(C) Dressing.

(D) Care and assistance with prosthetic devices.

(E) Bowel, bladder, and menstrual care.

(F) Skin care.

(G) Repositioning, range of motion exercises, and transfers.

(H) Feeding and assurance of adequate fluid intake.

(I) Respiration.

(J) Paramedical services.

(K) Assistance with self-administration of medications.

(2) Ancillary services including meal preparation and cleanup, routine laundry, shopping for food and other necessities, and domestic services may also be provided as long as these ancillary services are subordinate to personal care services. Ancillary services may not be provided separately from the basic personal care services.

(e) (1) (A) After consulting with the State Department of Social Services, the department shall adopt emergency regulations to establish the amount, scope, and duration of personal care services available to persons described in subdivision (a) in the fiscal year whenever the department determines that General Fund expenditures for personal care services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, are expected to exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992–93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute. At least 30 days prior to filing these regulations with the Secretary of State, the department shall give notice of the expected content of these regulations to the fiscal committees of both houses of the Legislature.

(B) In establishing the amount, scope, and duration of personal care services, the department shall ensure that General Fund expenditures for personal care services provided for under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7

(commencing with Section 12300) of Chapter 3, do not exceed the General Fund appropriation and the federal appropriation under Title XX of the federal Social Security Act provided for the 1992–93 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1992, as adjusted for caseload growth or as increased in the Budget Act or appropriated by statute.

(C) For purposes of this subdivision, ''caseload growth'' means an adjustment factor determined by the department based on (1) growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability, (2) the average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1988–89 to 1992–93 fiscal years, inclusive, due to the level of impairment, and (3) any increase in program costs that is required by an increase in the mandatory minimum wage.

(2) In establishing the amount, scope, and duration of personal care services pursuant to this subdivision, the department may define and take into account, among other things:

(A) The extent to which the particular personal care services are essential or nonessential.

(B) Standards establishing the medical necessity of the services to be provided.

(C) Utilization controls.

(D) A minimum number of hours of personal care services that must first be assessed as needed as a condition of receiving personal care services pursuant to this section.

The level of personal care services shall be established so as to avoid, to the extent feasible within budgetary constraints, medical out-of-home placements.

(3) To the extent that General Fund expenditures for services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1992–93 fiscal year, adjusted for caseload growth, exceed General Fund expenditures for services provided under this section and expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for services pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in any fiscal year, the excess of these funds shall be expended for any purpose as directed in the Budget Act or as otherwise statutorily disbursed by the Legislature.

(f) Services pursuant to this section shall be rendered, under the administrative direction of the State Department of Social Services, in the manner authorized in Article 7 (commencing with Section 12300) of

Chapter 3, for the In-Home Supportive Services program. A provider of personal care services shall be qualified to provide the service and shall be a person other than a member of the family. For purposes of this section, a family member means a parent of a minor child or a spouse.

(g) The maximum number of hours available under the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3, Section 14132.951, and this section, combined, shall be 283 hours per month.

(h) Personal care services shall not be provided to residents of facilities licensed by the department, and shall not be provided to residents of a community care facility or a residential care facility for the elderly licensed by the Community Care Licensing Division of the State Department of Social Services.

(i) Subject to any limitations that may be imposed pursuant to subdivision (e), determination of need and authorization for services shall be performed in accordance with Article 7 (commencing with Section 12300) of Chapter 3.

(j) (1) To the extent permitted by federal law, reimbursement rates for personal care services shall be equal to the rates in each county for the same mode of services in the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3, plus any increase provided in the annual Budget Act for personal care services rates or included in a county budget pursuant to paragraph (2).

(2) (A) The department shall establish a provider reimbursement rate methodology to determine payment rates for the individual provider mode of service that does all of the following:

(i) Is consistent with the functions and duties of entities created pursuant to Section 12301.6.

(ii) Makes any additional expenditure of state general funds subject to appropriation in the annual Budget Act.

(iii) Permits county-only funds to draw down federal financial participation consistent with federal law.

(B) This ratesetting method shall be in effect in time for any rate increases to be included in the annual Budget Act.

(C) The department may, in establishing the ratesetting method required by subparagraph (A), do both of the following:

(i) Deem the market rate for like work in each county, as determined by the Employment Development Department, to be the cap for increases in payment rates for individual practitioner services.

(ii) Provide for consideration of county input concerning the rate necessary to ensure access to services in that county.

(D) If an increase in individual practitioner rates is included in the annual Budget Act, the state-county sharing ratio shall be as established in Section 12306. If the annual Budget Act does not include an increase

in individual practitioner rates, a county may use county-only funds to meet federal financial participation requirements consistent with federal law.

(3) (A) By November 1, 1993, the department shall submit a state plan amendment to the federal Health Care Financing Administration to implement this subdivision. To the extent that any element or requirement of this subdivision is not approved, the department shall submit a request to the federal Health Care Financing Administration for any waivers as would be necessary to implement this subdivision.

(B) The provider reimbursement ratesetting methodology authorized by the amendments to this subdivision in the 1993–94 Regular Session of the Legislature shall not be operative until all necessary federal approvals have been obtained.

(k) (1) The State Department of Social Services shall, by September 1, 1993, notify the following persons that they are eligible to participate in the personal care services program:

(A) Persons eligible for services pursuant to the Pickle Amendment, as adopted October 28, 1976.

(B) Persons eligible for services pursuant to subsection (c) of Section 1383c of Title 42 of the United States Code.

(2) The State Department of Social Services shall, by September 1, 1993, notify persons to whom paragraph (1) applies and who receive advance payment for in-home supportive services that they will qualify for services under this section without a share of cost if they elect to accept payment for services on an arrears rather than an advance payment basis.

(*l*) An individual who is eligible for services subject to the maximum amount specified in subdivision (b) of Section 12303.4 shall be given the option of hiring his or her own provider.

(m) The county welfare department shall inform in writing any individual who is potentially eligible for services under this section of his or her right to the services.

(n) It is the intent of the Legislature that this entire section be an inseparable whole and that no part of it be severable. If any portion of this section is found to be invalid, as determined by a final judgment of a court of competent jurisdiction, this section shall become inoperative.

(o) Paragraphs (2) and (3) of subdivision (a) shall be implemented so as to conform to federal law authorizing their implementation.

(p) (1) Personal care services shall be provided as a covered benefit to a medically needy aged, blind, or disabled person, as defined in subdivision (a) of Section 14051, to the same extent and under the same requirements as they are provided under subdivision (a) of this section to a categorically needy, aged, blind, or disabled person, as defined in

subdivision (a) of Section 14050.1, and to the extent that federal financial participation is available.

(2) The department shall seek federal approval of a state plan amendment necessary to include personal care services described in paragraph (1) as a Medicaid service pursuant to subdivision (f) of Section 440.170 of Title 42 of the Code of Federal Regulations.

(3) In the event that the Department of Finance determines that expenditures of both General Fund moneys for personal care services provided under this subdivision to medically needy aged, blind, or disabled persons together with expenditures of both General Fund moneys and federal funds received under Title XX of the federal Social Security Act for all aged, blind, and disabled persons receiving in-home supportive services pursuant to Article 7 (commencing with Section 12300) of Chapter 3, in the 2000–01 fiscal year or in any subsequent fiscal year, are expected to exceed the General Fund appropriation and the federal appropriation received under Title XX of the federal Social Security Act for expenditures for all aged, blind, and disabled persons receiving in-home supportive services provided in the 1999–2000 fiscal year pursuant to Article 7 (commencing with Section 12300) of Chapter 3, as it read on June 30, 1998, as adjusted for caseload growth or as changed in the Budget Act or by statute or regulation, then this subdivision shall cease to be operative on the first day of the month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of the Department of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(4) Solely for purposes of paragraph (3), caseload growth means an adjustment factor determined by the department based on:

(A) Growth in the number of persons eligible for benefits under Chapter 3 (commencing with Section 12000) on the basis of their disability.

(B) The average increase in the number of hours in the program established pursuant to Article 7 (commencing with Section 12300) of Chapter 3 in the 1994–95 to 1998–99 fiscal years, inclusive, due to the level of impairment.

(C) Any increase in program cost that is required by an increase in hourly costs pursuant to the Budget Act or statute.

(5) In the event of a final judicial determination by any court of appellate jurisdiction or a final determination by the Administrator of the federal Centers for Medicare and Medicaid Services that personal care services must be provided to any medically needy person who is not aged, blind, or disabled, then this subdivision shall cease to be operative

on the first day of the first month that begins after the expiration of a period of 30 days subsequent to a notification in writing by the Director of Finance to the chairperson of the committee in each house that considers appropriations, the chairpersons of the committees and the appropriate subcommittees in each house that consider the State Budget, and the Chairperson of the Joint Legislative Budget Committee.

(6) If this subdivision ceases to be operative, all aged, blind, and disabled persons who would have been eligible to receive services under this section shall be immediately eligible for services under the IHSS Plus waiver authorized pursuant to Section 14132.951, if otherwise eligible, upon this section becoming inoperative. If this section becomes inoperative and a person is ineligible for the IHSS Plus waiver, then eligibility shall be determined under the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3.

SEC. 56. Section 14132.951 is added to the Welfare and Institutions Code, to read:

14132.951. (a) It is the intent of the Legislature that the State Department of Health Services seek approval of a Medicaid waiver under the federal Social Security Act in order that the services available under Article 7 (commencing with Section 12300) of Chapter 3, known as the In-Home Supportive Services program, may be provided as a Medi-Cal benefit under this chapter, to the extent federal financial participation is available. The waiver shall be known as the ''IHSS Plus waiver.''

(b) To the extent feasible, the IHSS Plus waiver described in subdivision (a) shall incorporate the eligibility requirements, benefits, and operational requirements of the In-Home Supportive Services program as it exists on the effective date of this section. The director shall have discretion to modify eligibility requirements, benefits, and operational requirements as needed to secure approval of the Medicaid waiver.

(c) Upon implementation of the IHSS Plus waiver, and to the extent federal financial participation is available, the services available through the In-Home Supportive Services program shall be furnished as benefits of the Medi-Cal program through the IHSS Plus waiver to persons who meet the eligibility requirements of the IHSS Plus waiver. The benefits shall be limited by the terms and conditions of the IHSS Plus waiver and by the availability of federal financial participation.

(d) Upon implementation of the IHSS Plus waiver:

(1) A person who is eligible for the IHSS Plus waiver shall no longer be eligible to receive services under the In-Home Supportive Services program to the extent those services are available through the IHSS Plus waiver.

(2) A person shall not be eligible to receive services pursuant to the IHSS Plus waiver to the extent those services are available pursuant to Section 14132.95.

(e) Services provided pursuant to this section shall be rendered, under the administrative direction of the State Department of Social Services, in the manner authorized in Article 7 (commencing with Section 12300) of Chapter 3, for the In-Home Supportive Services program.

(f) Services shall not be provided to residents of facilities licensed by the department, and shall not be provided to residents of a community care facility or a residential care facility for the elderly licensed by the State Department of Social Services.

(g) To the extent permitted by federal law, reimbursement rates for services shall be equal to the rates in each county for the same mode of services in the In-Home Supportive Services program pursuant to Article 7 (commencing with Section 12300) of Chapter 3.

(h) (1) Notwithstanding the Administrative Procedure Act, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department may implement the provisions of this section through all-county welfare director letters or similar publications. Actions taken to implement, interpret, or make specific this section shall not be subject to the Administrative Procedure Act or to the review and approval of the Office of Administrative Law. Upon request of the department, the Office of Administrative Law shall publish the regulations in the California Code of Regulations. All county welfare director letters or similar publications authorized pursuant to this section shall remain in effect for no more than 18 months.

(2) The department may also adopt emergency regulations implementing the provisions of this section. The adoption of regulations implementing this section shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. Any emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and shall remain in effect for no more than 18 months by which time final regulations shall be adopted. The department shall seek input from the entities listed in Section 12305.72 when developing the regulations, all county welfare director letters, or similar publications.

(i) In the event of a conflict between the terms of the IHSS Plus waiver and any provision of this part or any regulation, all-county welfare directors letters or similar publications adopted for the purpose of implementing this part, the terms of the waiver shall control to the extent that the services are covered by the waiver. If the department determines that a conflict exists, the department shall issue updated instructions to

counties for the purposes of implementing necessary program changes. The department shall post a copy of, or a link to, the instructions on its Web site.

(j) (1) Notwithstanding subdivision (b) or any other provision of this section, the department shall not waive or modify the provisions of Section 12301.2, 12301.6, 12302.25, 12306.1, or 12309.

(2) Upon receipt of the IHSS Plus waiver, the director shall report to the Legislature on any modifications in benefits or eligibility and operational requirements of the In-Home Supportive Services program required for receipt of the waiver.

SEC. 57. Section 15204.2 of the Welfare and Institutions Code is amended to read:

15204.2. (a) It is the intent of the Legislature that the annual Budget Act appropriate state and federal funds in a single allocation to counties for the support of administrative activities undertaken by the counties to provide benefit payments to recipients of aid under Chapter 2 (commencing with Section 11200) of Part 3 and to provide required work activities and supportive services in order to efficiently and effectively carry out the purposes of that chapter.

(b) (1) No later than 30 days after the enactment of the Budget Act of 2004, the State Department of Social Services, in consultation with the County Welfare Directors Association, shall estimate the amount of unspent funds appropriated in the 2003–04 fiscal year single allocation described in this section.

(2) Unspent funds appropriated in the 2003–04 fiscal year single allocation, not to exceed forty million dollars ($40,000,000), shall be reappropriated to, and in augmentation of, Item 5180-101-0890 of Section 2.00 of the Budget Act of 2004. The State Department of Social Services, in consultation with the County Welfare Directors Association, shall develop an allocation methodology for these funds. A planning allocation, based on the estimated amount of unspent funds and the agreed upon allocation methodology, shall be provided to the counties no later than 30 days after the enactment of the Budget Act of 2004.

SEC. 58. Chapter 2.4 (commencing with Section 16145) of Part 4 of Division 9 of the Welfare and Institutions Code is repealed.

SEC. 58.5. Section 16521.3 is added to the Welfare and Institutions Code, to read:

16521.3. (a) The Department of General Services and all other affected state agencies shall cooperate with the State Department of Social Services and the California Health and Human Services Agency Data Center to expedite and achieve timely completion and review of the Technical Architecture Alternatives Analysis Plan and all procurements related to child welfare services.

(b) Notwithstanding Section 11040 of the Government Code, the State Department of Social Services may obtain outside legal counsel to assist in negotiations for automation contracts related to child welfare services.

(c) The State Department of Social Services shall consult with stakeholders, including the County Welfare Directors Association, during the development of procurement and automation strategies related to child welfare services.

SEC. 59. Section 17021 of the Welfare and Institutions Code is amended to read:

17021. (a) Any individual who is not eligible for aid under Chapter 2 (commencing with Section 11200) of Part 3 as a result of the 60-month limitation specified in subdivision (a) of Section 11454 shall not be eligible for aid or assistance under this part until all of the children of the individual on whose behalf aid was received, whether or not currently living in the home with the individual, are 18 years of age or older.

(b) Any individual who is receiving aid under Chapter 2 (commencing with Section 11200) of Part 3 on behalf of an eligible child, but who is either ineligible for aid or whose needs are not otherwise taken into account in determining the amount of aid to the family pursuant to Section 11450 due to the imposition of a sanction or penalty, shall not be eligible for aid or assistance under this part.

(c) This section shall not apply to health care benefits provided under this part.

SEC. 60. Section 18939 of the Welfare and Institutions Code is amended to read:

18939. (a) Any person who is found to be eligible for federally funded SSI by the department shall be required to apply for SSI benefits. An individual may continue to receive benefits under this article if he or she fully cooperates in the application and administrative appeal process of the Social Security Administration. An individual shall continue to be eligible to receive benefits under this article if he or she receives an unfavorable decision from the Social Security Administration.

(b) (1) The State Department of Social Services shall require counties with a base caseload of recipients of aid under this chapter of 70 or more to establish an advocacy program to assist applicants and recipients of aid under this chapter in the application process for the SSI program. The department shall encourage counties with a base caseload of recipients of aid under this chapter of 69 or less to establish a similar advocacy program. Counties may, at their option, contract to provide any or all of the required advocacy services.

(2) The department shall provide assistance to counties in their efforts to implement an SSI advocacy program (SSIAP) for applicants and recipients of aid under this chapter.

(c) The State Department of Social Services shall ensure that its Disability Evaluation Division (DED) expedites the disability evaluations for applicants and recipients of aid under this chapter by utilizing its existing case records sharing procedures to ensure that information from previous DED evaluations for the Medi-Cal program are shared expeditiously with the federal component of the division that is adjudicating the SSI disability application.

(d) The State Department of Social Services shall reimburse counties for legal fees incurred by attorneys or other authorized representatives during the appeals phase of the SSI application process only when the county demonstrates that the legal representative successfully secures approval of SSI benefits. The legal fees for each case shall not exceed twice the difference between the maximum monthly individual payment under this chapter and the maximum monthly SSP payment.

(e) The department shall report to the Legislature, by July 1, 2007, on the outcomes of county SSI advocacy programs, including the numbers of cases that transitioned to SSI and the amount of savings realized through the transfers.

(f) Subdivisions (b) to (e), inclusive, of this section shall become inoperative on July 1, 2009.

SEC. 61. Section 19806 of the Welfare and Institutions Code is amended to read:

19806. (a) An independent living center shall not be required to provide any matching funds through private contributions as a condition of receiving state funds except to acquire state incentive funds.

(b) Each independent living center, except those centers which have been both established and maintained using federal funding under Title VII(c) of the federal Rehabilitation Act of 1973 as amended as their primary base grant, as determined by the department, shall receive to the extent funds are appropriated by the Legislature, at least two hundred thirty-five thousand dollars ($235,000) in base grant funds allocated by the department. The department shall allocate to those centers with Title VII(c) base grant funds of less than two hundred thirty-five thousand dollars ($235,000) an amount that, when combined with the Title VII(c) grant, equals two hundred thirty-five thousand dollars ($235,000).

(c) State funds described in subdivision (b) may be replaced by reimbursements under the Supplemental Security Disability Insurance and the Supplemental Security Income programs provided for under Titles II and XVII of the Federal Social Security Act, Subchapter II (commencing with Section 401) and Subchapter XVII (commencing with Section 1381) of Chapter 7 of Title 42 of the United States Code to the extent appropriated by the Legislature and allocated by the department to independent living centers under this chapter. Beginning with the 1998–99 fiscal year, and each year thereafter, to the extent these

funds from the Social Security Act are not appropriated by the Legislature as were appropriated in the 1997–98 fiscal year, an amount equal to the combined state and federal fund allocation to independent living centers in the Budget Act of 1997 shall be appropriated to, and allocated by, the department to independent living centers under this chapter.

(d) (1) Available state incentive funds shall be allocated at the beginning of each fiscal year based upon the average amount of private contributions received by the independent living center in the second and third preceding fiscal years.

(2) The maximum amount of incentive funds that may be allocated to any independent living center in any single fiscal year shall be computed as follows:

(A) ''Pool One'' is defined as 60 percent of all state incentive funds. ''Pool Two'' is defined as 40 percent of all state incentive funds. Each independent living center shall be entitled to an equal portion of Pool One, not to exceed the amounts raised pursuant to paragraph (1).

(B) Incentive funds from Pool One not used after the initial allocation pursuant to subparagraph (A) shall be added to Pool Two for allocation among all centers that had unmatched private contributions after distribution of Pool One funds. Pool Two funds shall be awarded in direct proportion to each center's percentage of the total remaining unmatched private contributions raised by those independent living centers.

(3) For the purpose of determining eligibility for state incentive funds, any independent living center that uses a fiscal year other than the state fiscal year may elect to use a different fiscal year so long as the closing date of the fiscal year so elected does not precede the closing date of the equivalent state fiscal year by more than 11 months.

(4) The amount of private contributions claimed by an independent living center for each fiscal year shall be verified by the department by utilizing appropriate financial records including, but not limited to, independent audits. Audits may be performed by the department up to three years from the close of the fiscal year during which state incentive funds were received by the independent living center being audited.

(5) State incentive funds that are not distributed to independent living centers shall not be allocated or retained by the department for distribution as state incentive funds in later fiscal years.

(e) For purposes of this section:

(1) ''Private funds'' does not include any funds originating from any entity of the federal, state, city, or county government or any political subdivision thereof. Notwithstanding the provisions of this section, fees from any source for services provided may be included as private

contributions by an independent living center for purposes of determining its allocation of incentive funds.

(2) ''State incentive funds'' means state funds appropriated by the Legislature for purposes of this chapter, except those funds allocated by the department pursuant to subdivisions (b) and (g) of this section.

(f) Any funds allocated under this chapter to any independent living center, other than as part of the initial allocation for each fiscal year, shall be made by contract amendment. Any contract amendment shall require the provision of services in addition to those required by the contract being amended. All those services required by contract amendment shall not be performed prior to the date the contract amendment is approved by the state.

(g) To the extent funds are appropriated by the Legislature for the purpose of providing assistive technology services described in subdivision (d) of Section 19801, two hundred ten thousand dollars ($210,000) of those funds shall be allocated to the nonprofit contractor selected by the Department of Rehabilitation to coordinate delivery of assistive technology services and the remainder shall be allocated equally among independent living centers. The nonprofit contractor shall provide statewide assistive technology information and referral and serve as a resource to the independent living centers' assistive technology service programs.

(h) To the extent funds are appropriated by the Legislature, after allocation of base grant and incentive funds and assistive technology funds, remaining funds shall be allocated by the department among independent living centers on the basis of the ratio of the total of the general population in an independent living center's geographic service areas as compared to the total of the general population in all independent living centers geographic services area statewide. The department shall adopt regulations for the distribution of population funds by June 30, 1999.

SEC. 62. (a) To the extent feasible, the California Health and Human Services Agency shall examine the criminal background check requirements for all programs within its purview and the processes to administer and enforce these requirements, and shall report its findings to the Legislature at budget hearings. The agency's report shall include all of the following:

(1) The health and human services programs that require the state to conduct criminal background checks.

(2) The standards, including evidentiary standards, that govern the background checks.

(3) The major activities necessary to complete investigations.

(4) The departments or contracting agencies that perform these activities.

(5) The costs associated with providing criminal background checks.

(b) The agency shall report on strategies to streamline and standardize criminal background check requirements and their processing, to create administrative efficiency. The agency's analysis shall include a review of programmatic and safety issues associated with streamlining the background check process.

SEC. 63. To the extent feasible, the California Health and Human Services Agency, in consultation with the California Department of Aging, the State Department of Social Services, and appropriate stakeholders, shall consider strategies to coordinate state and federally funded services, including In-Home Supportive Services, programs under the federal Older Americans Act, and the California Department of Aging's Community-based Services programs, in order to maximize cost-effectiveness and programmatic efficiency in the delivery of services to program consumers. The agency shall report during budget hearings for the 2005–06 fiscal year, regarding these strategies and the resulting programmatic effect.

SEC. 64. It is the intent of the Legislature to address the issue of child care in and out of market rate differentiation in the statutory process. Therefore, Sections 18074.3 and 18074.4 of Title 5 of the California Code of Regulations, as filed with the Office of Administrative Law by the State Department of Education, shall not become effective until July 1, 2005.

SEC. 64.6. (a) Notwithstanding 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, until emergency regulations are filed with the Secretary of State, the department may implement those sections of this act specified in subdivision (d) through all-county letters or similar instructions from the director. The department shall adopt emergency regulations, as necessary to implement the specified provisions of this act, no later than July 1, 2005, unless notification of a delay is made to the Chair of the Joint Legislative Budget Committee prior to that date. Under no circumstances shall the adoption of emergency regulations be delayed, or the use of all-county letters or similar instructions be extended, beyond July 1, 2006.

(b) The adoption of regulations implementing the applicable provisions of this act shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. The emergency regulations authorized by 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 shall remain in effect for no more than 180 days, by which time the final regulations shall be adopted.

(c) The department shall seek input from county welfare departments and other system stakeholders when developing all-county letters or similar instructions and regulations for purposes of this section.

(d) Subdivisions (a), (b), and (c) shall apply to Sections 17, 18, 20, 21, 22, 23, 24, 25, 27, 32, 33, 34, and 59 of this act.

SEC. 65. Sections 17, 18, 20, 21, 22, 23, 24, 25, 27, 32, 33, 34, and 59 of this act shall become operative October 1, 2004, or the first of the month following 90 days after the effective date of this act, whichever is later.

SEC. 66. 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. 67. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement budget reductions relating to public social services during the 2003–04 and 2004–05 fiscal years, it is necessary for this act to take effect immediately.

CHAPTER 230

An act to amend Section 13220 of the Fish and Game Code, to amend Section 12841 of, and to repeal Section 12112 of, the Food and Agricultural Code, to amend Section 51283 of, and to add Section 12812.6 to, the Government Code, to amend Sections 42821, 44011,

44060, 44091, and 44091.1 of the Health and Safety Code, to amend Sections 5045, 5046, and 30940 of, and to add Article 8 (commencing with Section 5079.70) to Chapter 1.1.5 of Division 5 of, Chapter 3.8 (commencing with Section 5750) to Division 5 of, Chapter 7.5 (commencing with Section 5819) to Division 5 of, and Part 3.5 (commencing with Section 71120) to Division 34 of, the Public Resources Code, to amend Sections 4000.1, 5067, and 24007 of the Vehicle Code, and to amend Sections 4201, 4227, 4251, 4252, 4327, 4357, 12878, 12878.1, 12878.33, and 12878.44 of, to add Sections 12639.1 and 79509.6 to, and to repeal Sections 4250 and 4405 of, the Water Code, relating to resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

I am signing Senate Bill 1107 with the following reductions:

The Sierra Nevada's are a valuable natural asset for all Californians. There is a bipartisan proposal pending in the Legislature to create a Sierra Nevada Conservancy that balances statewide values and local interests. I am deleting $5 million of the $9.15 million appropriation for the Sierra Nevada Cascade and sustaining $4.15 million to assure that there are adequate resources to make the Sierra Nevada Conservancy a success when it is created. The remaining funding level more accurately reflects the actual amount that the Secretary will be able to expend in the 2004–05 fiscal year until the conservancy is fully implemented.

Additionally, I am deleting $28.35 million of the $38.35 million appropriations for the purpose of awarding grants related to River Parkways conservation programs. These reductions better reflect the actual amount that the Secretary will be able to expend in the 2004–05 fiscal year because the bill requires new program activities which will take time to implement.

ARNOLD SCHWARZENEGGER, Governor

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

SECTION 1. Section 13220 of the Fish and Game Code is amended to read:

13220. Except as provided in Section 13230, the money in the Fish and Game Preservation Fund is available for expenditure, upon appropriation by the Legislature, for all of the following purposes:

(a) To the department for payment of refunds of sums determined by it to have been erroneously deposited in the fund, including, but not limited to, money received or collected in payment of fees, licenses, permits, taxes, fines, forfeitures, or services.

(b) To the department for expenditure in accordance with law for the payment of all necessary expenses incurred in carrying out this code and any other laws for the protection and preservation of birds, mammals, reptiles, and fish.

(c) To the commission for expenditure in accordance with law for the payment of the compensation and expenses of the commissioners and employees of the commission.

SEC. 2. Section 12112 of the Food and Agricultural Code is repealed.

SEC. 3. Section 12841 of the Food and Agricultural Code is amended to read:

12841. (a) It is unlawful for a person to sell for use in this state any pesticide products that have been registered by the director for which the mill assessment established by this article, and the regulations adopted pursuant to it, is not paid at the times specified in Section 12843.

(b) Except as provided in subdivision (d), every person who sells for use in this state a pesticide product that has been registered by the director shall pay to the director the applicable assessment. Those sales expressly include all sales made electronically, telephonically, or by any other means that result in a pesticide product being shipped to or used in this state. There is a rebuttable presumption that pesticide products that are sold or distributed into or within this state by any person are sold or distributed for use in this state.

(c) (1) Upon application of a registrant, the director shall determine whether a fertilizer or paper product is used as a carrier for a pesticide, and is sold in combination, and whether the mill assessment under this article shall be on the pesticide value only, when the product is designed, developed, and manufactured, and sold primarily for other than a pesticide use. If the director finds that the combination product has such a major component and is designed, developed, manufactured, and sold primarily for other than a pesticide use, the assessment provided by this article shall be paid on the equivalent percentage of the sales price of the active ingredients of the pesticide product. The director shall establish this percentage of the sales price. The percentage shall be the ratio of that portion of the sales price attributable to the pesticide portion to the total sales price of the combination product.

(2) For purposes of this section, ''active ingredient'' means any active ingredient that is required to be stated on the label on any registered pesticide under Section 12883.

(d) Assessments provided for in this article for sales of registered pesticides that are sold for use in this state shall be paid by the registrant except as follows:

(1) In those cases where the registrant did not first sell the pesticide into or within this state or have actual knowledge, at the time of its sale, that the pesticide would be sold for use in this state, the assessment shall be paid by the licensed pesticide broker, licensed pest control dealer, or other person who first sold the pesticide for use in this state.

(2) A person is not required to pay an assessment on registered products that are labeled only for use in further manufacturing or formulating of pesticides.

(e) It has been and continues to be the intent of the Legislature that this division requires the department to register all pesticides prior to their sale for use in this state and, except as otherwise provided by law, requires the department to regulate and control the use of pesticides in accordance with this division. Except as provided in Section 12841.1, the department shall continue to collect the assessment as provided in this article at the same rate on all registered agricultural and registered nonagricultural pesticides.

(f) (1) The mill assessment shall be paid at the following rates per dollar of sales for all sales of pesticides for use in this state:

(A) From January 1, 1998, to March 31, 1999, inclusive, the rate shall be 15.15 mills ($0.01515) plus any additional assessment authorized by Section 12841.1.

(B) From April 1, 1999, to December 31, 2002, inclusive, the rate shall be 17.5 mills ($0.0175) plus any additional assessment authorized by Section 12841.1.

(C) From January 1, 2003, to December 31, 2003, inclusive, the rate shall be 17.5 mills ($0.0175).

(D) For all transactions on or after January 1, 2004, the actual rate shall be that set by regulations adopted by the director at a rate adequate to support the department's annual expenditures authorized in the annual Budget Act and provide a prudent reserve. The rate set by the director shall be no greater than 21 mills ($0.021). However, if regulations are not adopted before a payment is due, payment shall be made at the rate of 17.5 mills ($0.0175), and, upon adoption of regulations, payment of any additional amount due shall be made.

(2) The regulations adopted pursuant to this section, or any amendment thereto, shall be adopted by the director in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. However, the adoption, amendment, readoption, or repeal of these regulations shall be considered by the Office of Administrative Law as an emergency, and necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding any other provision of law, the regulations shall remain in effect until amended by the director. The director shall make available to the public, upon the adoption of an emergency regulation establishing a new rate, the information upon which the director has calculated, based, or determined the new rate.

(g) The revenue collected pursuant to this section shall be deposited in the Department of Pesticide Regulation Fund and distributed as follows:

(1) Notwithstanding Sections 2282 and 12784, the director shall pay, in accordance with the criteria set forth in Section 12844, the following amounts to the counties as reimbursement for costs incurred by the counties in the administration and enforcement of Division 6 (commencing with Section 11401), this chapter, Chapter 3 (commencing with Section 14001), Chapter 3.4 (commencing with Section 14090), and Chapter 3.5 (commencing with Section 14101):

(A) From January 1, 1998, to March 31, 1998, inclusive, five-eighths of the money received during that period pursuant to this section.

(B) From April 1, 1998 to June 30, 2004, an amount equal to the revenue derived from 6 mills ($0.006) per dollar of sales for all pesticide sales for use in this state.

(C) Beginning July 1, 2004, an amount equal to the revenue derived from 7.6 mills ($0.0076) per dollar of sales for all pesticide sales for use in this state.

(2) All funds not otherwise distributed pursuant to this subdivision shall remain in the Department of Pesticide Regulation Fund and shall be available for expenditure, upon appropriation, to support the department's operations.

SEC. 4. Section 12812.6 is added to the Government Code, to read:

12812.6. The Secretary for Environmental Protection shall coordinate greenhouse gas emission reductions and climate-change activities in state government.

SEC. 5. Section 51283 of the Government Code is amended to read:

51283. (a) Prior to any action by the board or council giving tentative approval to the cancellation of any contract, the county assessor of the county in which the land is located shall determine the current fair market value of the land as though it were free of the contractual restriction. The assessor shall certify to the board or council the cancellation valuation of the land for the purpose of determining the cancellation fee. At the same time, the assessor shall send a notice to the assessee indicating the current fair market value of the land as though it were free of the contractual restriction. The notice shall advise the assessee of the right to appeal the fair market value of the land under Section 1605 of the Revenue and Taxation Code and that the appeal shall be filed within 60 days of the date of mailing printed on the notice or the postmark date therefor, whichever is later.

(b) Prior to giving tentative approval to the cancellation of any contract, the board or council shall determine and certify to the county auditor the amount of the cancellation fee that the landowner shall pay the county treasurer upon cancellation. That fee shall be an amount equal to $12^1/_2$ percent of the cancellation valuation of the property.

(c) If it finds that it is in the public interest to do so, the board or council may waive any payment or any portion of a payment by the

landowner, or may extend the time for making the payment or a portion of the payment contingent upon the future use made of the land and its economic return to the landowner for a period of time not to exceed the unexpired period of the contract, had it not been canceled, if all of the following occur:

(1) The cancellation is caused by an involuntary transfer or change in the use which may be made of the land and the land is not immediately suitable, nor will be immediately used, for a purpose which produces a greater economic return to the owner.

(2) The board or council has determined that it is in the best interests of the program to conserve agricultural land use that the payment be either deferred or is not required.

(3) The waiver or extension of time is approved by the Secretary of the Resources Agency. The secretary shall approve a waiver or extension of time if the secretary finds that the granting of the waiver or extension of time by the board or council is consistent with the policies of this chapter and that the board or council complied with this article. In evaluating a request for a waiver or extension of time, the secretary shall review the findings of the board or council, the evidence in the record of the board or council, and any other evidence the secretary may receive concerning the cancellation, waiver, or extension of time.

(d) The first two million thirty-six thousand dollars ($2,036,000) of revenue paid to the Controller pursuant to subdivision (e) in the 2004–05 fiscal year, and any other amount as approved in the final Budget Act for each fiscal year thereafter, shall be deposited in the Soil Conservation Fund, which is continued in existence. The money in the fund is available, when appropriated by the Legislature, for the support of all of the following:

(1) The cost of the farmlands mapping and monitoring program of the Department of Conservation pursuant to Section 65570.

(2) The soil conservation program identified in Section 614 of the Public Resources Code.

(3) Program support costs of this chapter as administered by the Department of Conservation.

(4) Program support costs incurred by the Department of Conservation in administering the open-space subvention program (Chapter 3 (commencing with Section 16140) of Part 1 of Division 4 of Title 2).

(e) When cancellation fees required by this section are collected, they shall be transmitted by the county treasurer to the Controller and deposited in the General Fund, except as provided in subdivision (d). The funds collected by the county treasurer with respect to each cancellation of a contract shall be transmitted to the Controller within 30

days of the execution of a certificate of cancellation of contract by the board or council, as specified in subdivision (b) of Section 51283.4.

(f) It is the intent of the Legislature that fees paid to cancel a contract do not constitute taxes but are payments that, when made, provide a private benefit that tends to increase the value of the property.

SEC. 6. Section 42821 of the Health and Safety Code is amended to read:

42821. (a) The registry shall be governed by a nine-member board of directors, to be composed of all of the following members:

(1) The Secretary of the Resources Agency, or his or her designee.

(2) The Secretary for Environmental Protection, or his or her designee.

(3) One member appointed by the Senate Committee on Rules.

(4) One member appointed by the Speaker of the Assembly.

(5) Five public members representing business, local government, and public interest environmental organizations, to be appointed by the Governor for two-year terms, staggered so that, initially, three public members serve one-year terms and two members serve two-year terms. In the event of a vacancy, the Governor shall appoint a replacement public board member.

(b) The board of directors of the registry is responsible for ensuring that the registry fulfills the purposes established by this chapter and meets the financial, reporting, and operating requirements of its articles of incorporation. The board of directors shall appoint and supervise an executive director, who shall hire and direct staff.

(c) The board of directors shall adopt bylaws that ensure that, at each regularly scheduled meeting of the registry, there will be an opportunity for members of the public to comment on matters being considered by the registry, as specified on the registry meeting agenda.

SEC. 7. Section 44011 of the Health and Safety Code is amended to read:

44011. (a) All motor vehicles powered by internal combustion engines that are registered within an area designated for program coverage shall be required biennially to obtain a certificate of compliance or noncompliance, except for all of the following:

(1) Every motorcycle, and every diesel-powered vehicle, until the department, pursuant to Section 44012, implements test procedures applicable to motorcycles or to diesel-powered vehicles, or both.

(2) Any motor vehicle that has been issued a certificate of compliance or noncompliance or a repair cost waiver upon a change of ownership or initial registration in this state during the preceding six months.

(3) (A) Prior to January 1, 2003, any motor vehicle manufactured prior to the 1974 model-year.

(B) Beginning January 1, 2003, any motor vehicle that is 30 or more model-years old.

(4) (A) Beginning January 1, 2005, any motor vehicle up to six model-years old.

(B) Any motor vehicle excepted by this paragraph shall be subject to testing and to certification requirements as determined by the department, if any of the following apply:

(i) The department determines through remote sensing activities or other means that there is a substantial probability that the vehicle has a tampered emission control system or would fail for other cause a smog check test as specified in Section 44012.

(ii) The vehicle was previously registered outside this state and is undergoing initial registration in this state.

(iii) The vehicle is being registered as a specially constructed vehicle.

(iv) The vehicle has been selected for testing pursuant to Section 44014.7 or any other provision of this chapter authorizing out-of-cycle testing.

(5) In addition to the vehicles exempted pursuant to paragraph (4), any motor vehicle or class of motor vehicles exempted pursuant to subdivision (b) of Section 44024.5. It is the intent of the Legislature that the department, pursuant to the authority granted by this paragraph, exempt at least 15 percent of the lowest emitting motor vehicles from the biennial smog check inspection.

(6) Any motor vehicle that the department determines would present prohibitive inspection or repair problems.

(7) Any vehicle registered to the owner of a fleet licensed pursuant to Section 44020 if the vehicle is garaged exclusively outside the area included in program coverage, and is not primarily operated inside the area included in program coverage.

(b) Vehicles designated for program coverage in enhanced areas shall be required to obtain inspections from appropriate smog check stations operating in enhanced areas.

SEC. 8. Section 44060 of the Health and Safety Code is amended to read:

44060. (a) The department shall prescribe the form of the certificate of compliance or noncompliance, repair cost waivers, and economic hardship extensions.

(b) The certificates, repair cost waivers, and economic hardship extensions shall be in the form of an electronic entry filed with the department, the Department of Motor Vehicles, and any other person designated by the department. The department shall ensure that the motor vehicle owner or operator is provided with a written report, signed by the licensed technician who performed the inspection, of any test

performed by a smog check station, including a pass or fail indication, and written confirmation of the issuance of the certificate.

(c) (1) The department shall charge a fee to a smog check station, including a test-only station, and a station providing referee functions, for a motor vehicle inspected at that station that meets the requirements of this chapter and is issued a certificate of compliance, a certificate of noncompliance, repair cost waiver, or economic hardship extension.

(2) The fee charged pursuant to paragraph (1) shall be calculated to recover the costs of the department and any other state agency directly involved in the implementation, administration, or enforcement of the motor vehicle inspection and maintenance program, and shall not exceed the amount reasonably necessary to fund the operation of the program, including all responsibilities, requirements, and obligations imposed upon the department or any of those state agencies by this chapter, that are not otherwise recoverable by fees received pursuant to Section 44034.

(3) Except for adjustments to reflect changes in the Consumer Price Index, as published by the United States Bureau of Labor Statistics, the fee for each certificate, waiver, or extension shall not exceed seven dollars ($7).

(4) Fees collected by the department pursuant to this subdivision shall be deposited in the Vehicle Inspection and Repair Fund. It is the intent of the Legislature that a prudent surplus be maintained in the Vehicle Inspection and Repair Fund.

(d) (1) Motor vehicles exempted under paragraph (4) of subdivision (a) of Section 44011 shall be subject to an annual smog abatement fee of twelve dollars ($12). The department may also, by regulation, subject motor vehicles that are exempted under paragraph (5) of subdivision (a) of Section 44011 to the twelve dollar ($12) annual smog abatement fee. Payment of the annual smog abatement fee shall be made to the Department of Motor Vehicles at the time of registration of the motor vehicle.

(2) Except as provided in subdivision (a) of Section 44091.1, fees collected pursuant to this subdivision shall be deposited on a daily basis into the Vehicle Inspection and Repair Fund.

(e) The sale or transfer of the certificate, waiver, or extension by a licensed smog check station or test-only station to any other licensed smog check station or to any other person, and the purchase or acquisition of the certificate, waiver, or extension, by any person, other than from the department, the department's designee, or pursuant to a vehicle's inspection or repair conducted pursuant to this chapter, is prohibited.

(f) Following implementation of the electronic entry certificate under subdivision (b), the department may require the modification of the

analyzers and other equipment required at smog check stations to prevent the entry of a certificate that has not been issued or validated through prepayment of the fee authorized by subdivision (c).

(g) The fee charged by licensed smog check stations to consumers for a certificate, waiver, or extension shall be the same amount that is charged by the department.

SEC. 9. Section 44091 of the Health and Safety Code is amended to read:

44091. (a) The High Polluter Repair or Removal Account is hereby created in the Vehicle Inspection and Repair Fund. All money deposited in the account pursuant to this article shall be available, upon appropriation by the Legislature, to the department and the state board to establish and implement a program for the repair or replacement of high polluters pursuant to Section 44062.1 and Article 10 (commencing with Section 44100).

(b) The department may accept donations or grants of funds from any person for purposes of the program and shall deposit that money in the account. Donations, grants, or other commitments of money to the account may be dedicated for specific purposes consistent with the uses of the account, including, but not limited to, purchasing higher emitting vehicles for the purpose of achieving the emission reductions required by the M-1 strategy of the 1994 State Implementation Plan (SIP).

(c) The funds which are available in the account in any fiscal year for a particular area that is subject to an inspection and maintenance program shall be distributed to reflect the number of vehicles registered in that area to the total number of vehicles registered in areas that are subject to inspection and maintenance programs. That percentage shall be the percentage of the total funds allocated to the program in that fiscal year which are available for that particular area.

(d) It is the intent of the Legislature that a prudent amount be determined to retain as a reserve in the Vehicle Inspection and Repair Fund, and that any moneys in the fund above that amount be transferred to the High Polluter Repair or Removal Account. It is also the intent of the Legislature that those transferred moneys be available, upon appropriation by the Legislature, for expenditure by the department to support the programs described in this section.

(e) During any fiscal year, the money in the account shall be available, upon appropriation by the Legislature, for the following purposes:

(1) Assistance in the repair of high polluters pursuant to the program established pursuant to Section 44062.1.

(2) Voluntary accelerated retirement of high polluters.

(3) Rulemaking, vehicle testing, and other technical work required to implement and administer the repair assistance program established

pursuant to Section 44062.1 and the program described in Article 10 (commencing with Section 44100).

(f) An amount of one million dollars ($1,000,000) annually for the 1997–98 fiscal year and the 1998–99 fiscal year shall be made available from the account for a program to evaluate the emission reduction effectiveness of the M-1 strategy of the 1994 SIP.

(g) All remaining amounts in the account shall be available to the program of repair assistance established pursuant to Section 44062.1.

(h) In no case shall the funding available in any subsequent fiscal year to the department for repairing or removing high-emitting vehicles under the inspection and maintenance program be less than the amount made available from the Vehicle Inspection and Repair Fund for that purpose in the 1995–96 fiscal year.

SEC. 10. Section 44091.1 of the Health and Safety Code is amended to read:

44091.1. The fee specified in paragraph (1) of subdivision (d) of Section 44060 shall be twelve dollars ($12). The revenues from that fee shall be allocated as follows:

(a) The revenues generated by six dollars ($6) of the fee shall be deposited in the Air Pollution Control Fund, and shall be available for expenditure, upon appropriation by the Legislature, to fund the Carl Moyer Memorial Air Quality Standards Attainment Program (Chapter 9 (commencing with Section 44275)) to the extent that the state board or a participating district determines the moneys are expended to mitigate or remediate the harm caused by the type of motor vehicle on which the fee is imposed.

(b) (1) Except as provided for in paragraph (2), of the revenue generated by the remaining six dollars ($6) of the fee, two dollars ($2) shall be deposited in the account created by Section 44091, while the revenue generated by the remaining four dollars ($4) shall be deposited in the Vehicle Inspection and Repair Fund.

(2) All revenue generated by the remaining six dollars ($6) of the fee described in this subdivision that is imposed at first registration of a motor vehicle and that is exempted under paragraph (4) of subdivision (a) of Section 44011 shall be deposited in the account created by Section 44091.

SEC. 11. Section 5045 of the Public Resources Code is amended to read:

5045. (a) The tufa and associated sand structures at Mono Lake are a valuable geologic and scientific natural resource and are unique in North America for their beauty, abundance, diversity, and public accessibility. Their extreme fragility requires special measures for their protection and preservation for the enjoyment and education of the public.

(b) The Mono Lake Tufa State Reserve is hereby established as a unit of the state park system and shall consist of the state-owned portions of the Mono Lake bed lying at or below the elevation of 6,417 feet above sea level. The reserve shall include, and the department shall manage, all resources within the reserve's boundaries including the waters of Mono Lake. As soon as practicable after January 1, 1982, the State Lands Commission shall issue a permit for occupancy to the department pursuant to Section 6221.

SEC. 12. Section 5046 of the Public Resources Code is amended to read:

5046. (a) The reserve shall be managed primarily for the purpose of protecting the tufa and associated sand structures and providing for their interpretation. The department shall designate public accessways to Mono Lake for recreational and other purposes that are not in conflict with the preservation of the tufa and associated sand structures.

(b) The department may enter into agreements with any other public agency to provide for the joint management of the reserve and the provision of visitor and interpretive services and facilities in connection therewith. For purposes of administrative support, departmental personnel may be assigned to any other unit of the state park system in the vicinity of the reserve.

(c) The department shall commence managing the reserve, including all resources within the reserve's boundaries which includes the waters of Mono Lake, as soon as practicable after January 1, 1982, and, to this end, the reserve is exempt from the requirements of subdivision (a) of Section 5002.2 because the only improvements contemplated at the reserve are temporary facilities within the meaning of subdivision (c) of Section 5002.2.

SEC. 13. Article 8 (commencing with Section 5079.70) is added to Chapter 1.1.5 of Division 5 of the Public Resources Code, to read:

Article 8. The California Main Street Program

5079.70. There is hereby created within the office the California Main Street Program to provide technical assistance and training for small cities' government, business organizations, merchants, and property owners to accomplish community and economic revitalization and development of older central and historic business districts and neighborhoods.

5079.72. There is hereby established in the State Treasury the California Main Street Program Fund. All private contributions, federal funds, and fees for services, if levied, shall be deposited into the fund for the operation of the program. The moneys in the fund shall be available, upon appropriation by the Legislature, for the purposes of this article.

5079.74. The office shall incur costs to implement this article only to the extent that funding adequate to cover those costs has been deposited in, and appropriated from, the California Main Street Program Fund.

SEC. 14. Chapter 3.8 (commencing with Section 5750) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 3.8. CALIFORNIA RIVER PARKWAYS ACT OF 2004

5750. This chapter shall be known, and may be cited, as the California River Parkways Act of 2004.

5751. The Legislature finds and declares all of the following:

(a) River parkways directly improve the quality of life in California by providing important recreational, open space, wildlife, flood management, water quality, and urban waterfront revitalization benefits to communities in the state.

(b) River parkways provide communities with safe places for recreation including family picnics; bicycling and hiking; areas for river access for swimming, canoeing, and fishing; and many other activities.

(c) River parkways help revitalize deteriorated urban neighborhoods and provide an anchor for economic development by providing important recreational and scenic amenities.

(d) River parkways provide accessible open space that helps remedy the severe shortage of park and open-space areas that plague many urban and suburban communities, small towns, and rural areas.

(e) River parkways provide flood protection benefits for communities by providing wider corridors along our waterways that help store, and provide safe corridors for the passage of, storm waters.

(f) River parkways protect and restore riparian and riverine habitat.

(g) River parkways improve or protect the water quality in our rivers and streams.

(h) River parkways provide the recreational and ecosystem components of integrated regional water management and watershed plans.

(i) California can improve the quality of life in this state by assisting public agencies and nonprofit organizations in establishing, developing, and restoring river parkways.

5752. For purposes of this chapter, the following terms have the following meanings:

(a) ''Acquisition'' means obtaining fee title or a lesser interest in real property, including easements, development rights, or water rights.

(b) ''Development'' includes, but is not limited to, improvement, rehabilitation, restoration, enhancement, preservation, protection, and interpretation.

(c) ''Interpretation'' includes, but is not limited to, visitor-serving amenities that communicate the significance and value of natural, historical, and cultural resources in a way that increases understanding and enjoyment of those resources.

(d) ''Nonprofit organization'' means a private, nonprofit organization that qualifies for exempt status under Section 501(c)(3) of the United States Internal Revenue Code.

(e) ''Parkways program'' means the California River Parkways Program established pursuant to subdivision (a) of Section 5753.

(f) ''Secretary'' means the Secretary of the Resources Agency.

5753. (a) The California River Parkways Program is hereby established in the office of the Secretary of the Resources Agency, to be administered by the secretary.

(b) The secretary shall make grants available to public agencies and nonprofit organizations for river parkway projects from moneys appropriated to the secretary. Those funds may also be used for costs directly related to the delivery of the river parkways program.

(c) Grants may be awarded for the acquisition of land for river parkways or for the restoration, protection, and development of river parkways in accordance with the provisions of this chapter. Not more than 10 percent of the funds appropriated to the secretary for river parkways may be used for urban stream restoration projects pursuant to Section 7048 of the Water Code.

(d) All projects shall comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(e) All acquisitions shall be from willing sellers.

(f) To be eligible for a grant, a project shall provide public access or be a component of a larger parkway plan that provides public access and, at a minimum, meets two of any of the following conditions:

(1) Provide compatible recreational opportunities including trails for strolling, hiking, bicycling, and equestrian uses along rivers and streams.

(2) Protect, improve, or restore riverine or riparian habitat, including benefits to wildlife habitat and water quality.

(3) Maintain or restore the open-space character of lands along rivers and streams so that they are compatible with periodic flooding as part of a flood management plan or project.

(4) Convert existing developed riverfront land uses into uses consistent with river parkways, as identified in this chapter.

(5) Provide facilities to support or interpret river or stream restoration or other conservation activities.

5754. To the extent funds are available, the secretary shall develop guidelines for the preparation and consideration of river parkway plans

for the purpose of Section 5753 and may award grants to assist in development of such plans.

5755. The secretary shall report annually to the Legislature regarding the geographic distribution, types, and benefits of projects funded pursuant to this chapter.

5756. The secretary shall develop regulations, criteria, or procedural guidelines for the implementation of this chapter that shall be consistent with, but not limited to, Section 5753. All regulations, criteria, and procedural guides adopted by the secretary to implement this chapter are exempt from Chapter 3.5 (commencing with Section 11340) of Division 3 of Title 2 of the Government Code.

SEC. 15. Chapter 7.5 (commencing with Section 5819) is added to Division 5 of the Public Resources Code, to read:

CHAPTER 7.5. SIERRA NEVADA-CASCADE CONSERVATION GRANT PROGRAM

5819. Unless the context requires otherwise, the following definitions govern this chapter:

(a) ''Acquisition'' means obtaining fee title or a lesser interest in real property, including an easement, development right, or water right.

(b) ''Development'' includes, but is not limited to, improvement, rehabilitation, restoration, enhancement, preservation, protection, and interpretation.

(c) ''Interpretation'' includes, but is not limited to, visitor serving amenities that communicate the significance and value of natural, historical, and cultural resources in a manner that increases understanding of those resources.

(d) ''Nonprofit organization'' means a private, nonprofit organization that qualifies for exempt status under paragraph (3) of subsection (c) Section 501 of Title 26 of the United States Code.

(e) ''Program'' means the Sierra Nevada-Cascade Conservation Grant Program established pursuant to this chapter.

(f) ''Secretary'' means the Secretary of the Resources Agency.

(g) ''Sierra Nevada-Cascade Mountain Region'' or ''region'' has the meaning set forth in subdivision (e) of Section 5096.347.

5819.1. (a) This chapter establishes the Sierra Nevada-Cascade Conservation Grant Program in the Resources Agency.

(b) The secretary shall administer the program.

(c) The program applies only in the Sierra Nevada-Cascade Mountain Region.

5819.2. (a) The secretary shall administer the program consistent with authorized funding, and collaborate and cooperate with local governments and interested parties.

(b) The purposes of the program include all of the following:

(1) Providing increased opportunities for tourism and recreation in the region.

(2) Protecting water quality in the region from degradation.

(3) Reducing the risk of natural disasters, such as fire, in the region.

(4) Protecting, conserving, and restoring the region's physical, cultural, archaeological, and historical resources.

(5) Assisting the region's economy, including providing increased economic opportunities.

(6) Identifying the highest priority projects and initiatives in the region for which funding is needed.

(7) Enhancing public use and enjoyment of land in the region that is owned by the state or a local government.

(8) Supporting efforts that advance, in a complementary manner, environmental preservation of the region and the economic well-being of the region's residents.

(9) Helping to preserve working landscapes in the region.

(10) Supporting local government efforts to develop and implement open space and habitat protection plans, including natural community conservation plans, in the region.

5819.3. (a) The secretary may undertake projects and activities to further the purposes identified in Section 5819.2. Those projects and activities may include providing grants and loans to public agencies and nonprofit organizations for acquisition, restoration, development, and other activities and projects, that are necessary to meet the purposes identified in Section 5819.2. The projects and activities undertaken by the secretary, including the providing of grants and loans, shall be consistent with any restrictions related to the source of moneys that are used to fund those activities and projects.

(b) In administering this chapter, the secretary shall collaborate and cooperate with the city or county in which a grant is proposed to be used or an interest in land is proposed to be acquired.

5819.4. To implement Section 79544 of the Water Code, the secretary may provide grants to local public agencies, local water districts, and nonprofit organizations, for acquisition in the region pursuant to this chapter and consistent with Section 79544 of the Water Code, only for the following purposes:

(a) Acquiring agricultural, forest, or grazing land, or other working landscapes, to prevent conversion of that land to uses that could decrease water quality in the region and degrade habitat values, or to convert that land to uses that could improve water quality in the region and habitat.

(b) Acquiring land adjacent to or affecting rivers, streams, lakes, or wetlands, that, if not protected, could lead to a decrease in water quality in the region.

(c) Purchasing water rights that will protect both water quality and in stream flow, in the region, for resource protection.

(d) Acquiring land that mitigates or prevents current or anticipated management practices that contribute to water quality degradation in the region.

5819.5. The secretary shall require an applicant for a grant for land or water resource acquisition to include in the grant application a proposal for the long-term management of the resource that the applicant proposes to acquire. The applicant shall identify the entity that will hold title to the resource, including any state or federal agency to which title may be transferred after acquisition, and the entity that will be responsible for managing and protecting the water quality value of the resource.

5819.6. An acquisition made pursuant to this chapter shall be from a willing seller.

5819.7. All regulations, criteria, and procedural guides that the secretary adopts to implement this chapter are exempt from Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

5819.8. It is the intent of the Legislature to provide in any legislation that establishes a Sierra Nevada Conservancy an appropriate transition from the program established by this chapter within the Resources Agency to the new conservancy.

SEC. 16. Section 30940 of the Public Resources Code is amended to read:

30940. (a) 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.

(b) (1) On or before June 30, 2005, the board, in consultation with the Department of Food and Agriculture, shall adopt guidelines for a dairy water quality improvement grant program that provides competitive grants for projects, including water quality planning and regional and on-farm projects, and projects undertaken by dairy operators, to reduce threats to, or impairment of, water quality from dairy operations.

(2) In order to be eligible for a grant pursuant to this subdivision, a dairy operator shall have completed the environmental stewardship short course of the dairy quality assurance program, unless the board finds and determines that the operator has taken other similar actions to mitigate adverse environmental effects of its dairy operation.

(c) The board shall specify a matching fund requirement, as a condition of providing grants under subdivision (a) or (b).

SEC. 17. Part 3.5 (commencing with Section 71120) is added to Division 34 of the Public Resources Code, to read:

PART 3.5. CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY CONSOLIDATION

71120. Unless the context requires otherwise, the following definitions govern this part:

(a) ''Agency'' means the California Environmental Protection Agency.

(b) ''Secretary'' means the Secretary for Environmental Protection.

71121. (a) In the 2004–05 fiscal year, to the extent that it will achieve actual budget savings and to the extent authorized by existing law, the secretary shall consolidate the number of accounts and funds in the Treasury that are for the support of programs administered by the boards, departments, and offices within the agency.

(b) The secretary shall request the Governor to reflect the consolidation of funds in the proposed Governor's budget for fiscal year 2005–06.

(c) Nothing in this section authorizes a change in purpose, revenue, management, allocation, or expenditure, related to a program supported by a special fund, or the manner or means of collecting revenue that is deposited in a special fund.

71122. In the 2004–05 fiscal year, to the extent that it will achieve actual budget savings, the secretary shall consolidate the following non-policy functions that are common among the boards, departments, and offices within the agency:

(a) Information technology.

(b) Collecting fees.

(c) Procuring basic office supplies and equipment.

(d) The generic human resources functions that support state personnel, including health and safety programs, employee training, recruitment and exams for common civil service classifications, equal opportunity officers, transportation related services and programs, mail, reproduction, shipping, and receiving.

71123. (a) The implementation of Sections 71121 and 71122 shall not affect the independence of a board, department, or office within the

agency to administer its own budget or to manage its own employees, except for the specific activities consolidated by the secretary pursuant to those sections.

(b) The implementation of Sections 71121 and 71122 shall not affect the personnel of a board, department, or office within the agency, who are engaged in program work and related support functions such as contract administration and facilities management.

(c) The implementation of Sections 71121 and 71122 shall not result in the transfer of fee revenue from a board, department, or office within the agency, to another board, department, or office within the agency.

(d) Nothing in this part shall affect an executive reorganization pursuant to Article 7.5 (commencing with Section 12080) of Chapter 1 of Part 2 of Division 3 of Title 2 of the Government Code.

71124. The secretary shall report any budget savings achieved pursuant to Sections 71121 and 71122 to the Legislature's budget committees, for appropriation to programs that directly reduce air pollution or water pollution, or protect public health and the environment, if that appropriation complies with existing constraints on the use of the moneys saved.

71125. The secretary may use a reimbursement from a board, department, or office within the agency for a consolidated service that the agency provides to those entities.

71126. Upon the request of the secretary, the Department of Finance shall assist the secretary in complying with this part.

SEC. 18. Section 4000.1 of the Vehicle Code is amended to read:

4000.1. (a) Except as otherwise provided in subdivision (b), (c), or (d) of this section, or subdivision (b) of Section 43654 of the Health and Safety Code, the department shall require upon initial registration, and upon transfer of ownership and registration, of any motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, and upon registration of a motor vehicle previously registered outside this state which is subject to those provisions of the Health and Safety Code, a valid certificate of compliance or a certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(b) With respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, the department shall accept a statement completed pursuant to subdivision (b) of Section 24007 in lieu of the certificate of compliance.

(c) For purposes of determining the validity of a certificate of compliance or noncompliance submitted in compliance with the requirements of this section, the definitions of new and used motor

vehicle contained in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code shall control.

(d) Subdivision (a) does not apply to a transfer of ownership and registration under any of the following circumstances:

(1) The initial application for transfer is submitted within the 90-day validity period of a smog certificate as specified in Section 44015 of the Health and Safety Code.

(2) The transferor is either the parent, grandparent, sibling, child, grandchild, or spouse of the transferee.

(3) A vehicle registered to a sole proprietorship is transferred to the proprietor as owner.

(4) The transfer is between companies whose principal business is leasing vehicles, if there is no change in the lessee or operator of the vehicle or between the lessor and the person who has been, for at least one year, the lessee's operator of the vehicle.

(5) The transfer is between the lessor and lessee of the vehicle, if there is no change in the lessee or operator of the vehicle.

(6) Prior to January 1, 2003, the motor vehicle was manufactured prior to the 1974 model-year.

(7) Beginning January 1, 2003, the motor vehicle is 30 or more model-years old.

(8) Beginning January 1, 2005, the transfer is for a vehicle that is four or less model-years old. The department shall impose a fee of eight dollars ($8) on the transferee of a vehicle that is four or less model-years old. Revenues generated from the imposition of that fee shall be deposited into the Vehicle Inspection and Repair Fund.

(e) The State Air Resources Board, under Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, may exempt designated classifications of motor vehicles from subdivision (a) as it deems necessary, and shall notify the department of that action.

(f) Subdivision (a) does not apply to a motor vehicle when an additional individual is added as a registered owner of the vehicle.

SEC. 19. Section 5067 of the Vehicle Code is amended to read:

5067. (a) The department, in consultation with the California Coastal Commission, shall design and make available for issuance pursuant to this article special environmental design license plates. Notwithstanding subdivision (a) of Section 5060, the special environmental design license plates shall bear a graphic design depicting a California coastal motif and may be issued in a combination of numbers or letters, or both, as requested by the applicant for the plates. Any person described in Section 5101 may, upon payment of the additional fees set forth in subdivision (b), apply for and be issued a set of special environmental design license plates.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, renewal, retention, or transfer of the special environmental design license plates authorized pursuant to this section:

(1) For the original issuance of the plates, fifty dollars ($50).

(2) For a renewal of registration of the plates or retention of the plates, if renewal is not required, forty dollars ($40).

(3) For transfer of the plates to another vehicle, fifteen dollars ($15).

(4) For each substitute replacement plate, thirty-five dollars ($35).

(5) In addition, for the issuance of an environmental license plate, as defined in Section 5103, the additional fees prescribed in Section 5106 and 5108. The additional fees prescribed in Sections 5106 and 5108 shall be deposited in the California Environmental License Plate Fund.

(c) After deducting its administrative costs under this section, the department, except as provided in paragraph (5) of subdivision (b), shall deposit the additional revenue derived from the issuance, renewal, transfer, and substitution of special environmental design license plates as follows:

(1) One-half in the California Beach and Coastal Enhancement Account, which is hereby established in the California Environmental License Plate Fund. Upon appropriation by the Legislature, the money in the account shall be allocated by the Controller as follows:

(A) First to the California Coastal Commission for expenditure for the Adopt-A-Beach program, the Beach Cleanup Day program, coastal public education programs, and grants to local governments and nonprofit organizations for the costs of operating and maintaining public beaches related to these programs.

(B) Second, from funds remaining after the allocation required under subparagraph (A), to the State Coastal Conservancy for coastal natural resource restoration and enhancement projects and for other projects consistent with the provisions of Division 21 (commencing with Section 31000) of the Public Resources Code.

(2) One-half in the California Environmental License Plate Fund.

SEC. 20. Section 24007 of the Vehicle Code is amended to read:

24007. (a) (1) No dealer or person holding a retail seller's permit shall sell a new or used vehicle that is not in compliance with this code and departmental regulations adopted pursuant to this code, unless the vehicle is sold to another dealer, sold for the purpose of being legally wrecked or dismantled, or sold exclusively for off-highway use.

(2) Paragraph (1) does not apply to any vehicle sold by either (A) a dismantler after being reported for dismantling pursuant to Section 11520 or (B) a salvage pool after obtaining a salvage certificate pursuant to Section 11515 or a nonrepairable vehicle certificate issued pursuant to Section 11515.2.

(3) Notwithstanding paragraph (1), the equipment requirements of this division do not apply to the sale of a leased vehicle by a dealer to a lessee if the lessee is in possession of the vehicle immediately prior to the time of the sale and the vehicle is registered in this state.

(b) (1) Except as provided in Section 24007.5, no person shall sell, or offer or deliver for sale, to the ultimate purchaser, or to any subsequent purchaser a new or used motor vehicle, as those terms are defined in Chapter 2 (commencing with Section 39010) of Part 1 of Division 26 of the Health and Safety Code, subject to Part 5 (commencing with Section 43000) of that Division 26 which is not in compliance with that part and the rules and regulations of the State Air Resources Board, unless the vehicle is sold to a dealer or sold for the purpose of being legally wrecked or dismantled.

(2) Prior to or at the time of delivery for sale, the seller shall provide the purchaser a valid certificate of compliance or certificate of noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(3) Paragraph (2) does not apply to any vehicle whose transfer of ownership and registration is described in subdivision (d) of Section 4000.1.

(4) Paragraphs (1) and (2) do not apply to any vehicle sold by either (A) a dismantler after being reported for dismantling pursuant to Section 11520 or (B) a salvage pool after obtaining a salvage certificate pursuant to Section 11515 or a nonrepairable vehicle certificate issued pursuant to Section 11515.2.

(c) (1) With each application for initial registration of a new motor vehicle or transfer of registration of a motor vehicle subject to Part 5 (commencing with Section 43000) of Division 26 of the Health and Safety Code, a dealer, the purchaser, or his or her authorized representative, shall transmit to the Department of Motor Vehicles a valid certificate of compliance or noncompliance, as appropriate, issued in accordance with Section 44015 of the Health and Safety Code.

(2) Notwithstanding paragraph (1) of this subdivision, with respect to new vehicles certified pursuant to Chapter 2 (commencing with Section 43100) of Part 5 of Division 26 of the Health and Safety Code, a dealer may transmit, in lieu of a certificate of compliance, a statement, in a form and containing information deemed necessary and appropriate by the Director of Motor Vehicles and the Executive Officer of the State Air Resources Board, to attest to the vehicle's compliance with that chapter. The statement shall be certified under penalty of perjury, and shall be signed by the dealer or the dealer's authorized representative.

(3) Paragraph (1) does not apply to a transfer of ownership and registration under any of the circumstances described in subdivision (d) of Section 4000.1.

SEC. 24. Section 4201 of the Water Code is amended to read:

4201. All of the cost of administration of a service area and the distribution of water therein shall be paid by the owners of the rights to divert or store water within the service area as provided in this chapter.

SEC. 25. Section 4227 of the Water Code is amended to read:

4227. The statement shall also contain an apportionment of the amount of the budget among the owners of the various rights to store or divert within the service area.

SEC. 26. Section 4250 of the Water Code is repealed.

SEC. 27. Section 4251 of the Water Code is amended to read:

4251. One-tenth of the budget for the service area shall be apportioned equally among the respective ownerships of all water rights involved, and except as otherwise provided in this article the remaining nine-tenths shall be apportioned among the ownerships of the respective water rights in accordance with the quantities of water that the owners of the respective water rights are entitled to store or divert within the service area.

SEC. 28. Section 4252 of the Water Code is amended to read:

4252. In all cases of rights to divert the direct flow of a stream, without storage, for power development or other nonconsumptive use, where the entire flow so diverted, with the exception of reasonable transportation losses, is returned to the same stream system above the next lower diversion, the owners of these rights shall share on account of these rights only in the equal apportionment of one-tenth of the budget for the service area, and shall not share in so far as these rights are concerned in the apportionment of the remaining nine-tenths.

SEC. 29. Section 4327 of the Water Code is amended to read:

4327. The statement shall be submitted on or before the first day of September of the year preceding that for which it is made.

SEC. 30. Section 4357 of the Water Code is amended to read:

4357. The expenditures for the supervision of the distribution of water in any service area shall be paid from that portion or account of the Water Resources Revolving Fund credited on the department's books to that service area, upon claims approved by the department and otherwise audited and approved as may be required in the case of other claims against the state.

SEC. 31. Section 4405 of the Water Code is repealed.

SEC. 32. Section 12639.1 is added to the Water Code, to read:

12639.1. The department may investigate any project adopted and authorized by the state and approved by the Congress to determine whether the project is no longer justified and whether appropriate action should be taken to deauthorize the project. The department shall coordinate that investigation with the federal agency involved in the project.

SEC. 33. Section 12878 of the Water Code is amended to read:

12878. Unless the context otherwise requires, the following definitions apply throughout this chapter:

(a) ''Department'' means Department of Water Resources.

(b) ''Director'' means the Director of Water Resources.

(c) ''Board'' means the State Reclamation Board.

(d) Wherever the words ''board or department'' or ''board or director'' are used together in this chapter they shall mean board as to any project in the Sacramento or San Joaquin Valleys or on or near the Sacramento River or the San Joaquin River or any of their tributaries, and department or director as to any project in any other part of the state outside of the jurisdiction of the board.

(e) ''Project'' means any project that has been authorized pursuant to Chapter 2 (commencing with Section 12639) or Chapter 4 (commencing with Section 12850) and concerning which assurances have been given to the Secretary of the Army or the Secretary of Agriculture that the state or a political subdivision thereof will operate and maintain the project works in accordance with regulations prescribed by the federal government or any project upon which assurances have been given to the Secretary of the Army and upon which the Corps of Engineers, United States Army, has performed work pursuant to Section 208 of Public Law 780, 83rd Congress, 2nd Session, approved September 3, 1954.

(f) ''Maintenance'' means work described as maintenance by the federal regulations issued by the Secretary of the Army or the Secretary of Agriculture for any project.

(g) ''Maintenance area'' means described or delineated lands that are found by the board or department to be benefited by the maintenance and operation of a particular unit of a project.

(h) ''Unit'' means any portion of the works of a project designated as a unit by the board or department, other than the works prescribed in Section 8361 of this code, or works operated and maintained by the United States.

(i) ''Land'' includes improvements.

(j) ''Local agency'' means and includes all districts or other public agencies responsible for the operation of works of any project under Section 8370, Chapter 2 (commencing with Section 12639), Chapter 4 (commencing with Section 12850), or any other law of this state.

(k) ''Cost of operation and maintenance'' means the cost of all maintenance, as defined in subdivision (f), and also includes, but is not limited to, all of the following costs:

(1) All costs incurred by the department or the board in the formation of the maintenance area under this chapter.

(2) Any costs, if deemed appropriate by the department, to secure insurance covering liability to others for damages arising from the

maintenance activities of the department or from flooding in the maintenance area.

(3) Any costs of defending any action brought against the state, the department, or the board, or any employees of these entities, for damages arising from the maintenance activities of the department or from flooding in the maintenance area.

(4) Any costs incurred in the payment of any judgment or settlement of an action against the state, the department, or the board, or any employees of these entities, for damages arising from the formation of the maintenance area or from any maintenance activities of the department or flooding in the maintenance area.

SEC. 34. Section 12878.1 of the Water Code is amended to read:

12878.1. (a) Whenever the department finds that a unit of a project is not being operated or maintained in accordance with the standards established by federal regulations or whenever the governing body of a local agency obligated to operate and maintain that unit by resolution duly adopted and filed with the department declares that it no longer desires to operate and maintain the unit, the department shall prepare a statement to that effect specifying in detail the particular items of work necessary to be done in order to comply with the standards of the federal government together with an estimate of the cost thereof for the current fiscal year and for the ensuing fiscal year.

(b) Notwithstanding any other provision of law, the board or the department is not required to proceed in accordance with subdivision (a) or with the formation of a maintenance area under this chapter if neither the board nor the department has given the nonfederal assurances to the United States required for the project. If neither the board nor the department has given the nonfederal assurances to the United States required for the project, the board or department may elect to proceed with the formation if it determines that the formation of a maintenance area is in the best interest of the state.

SEC. 35. Section 12878.33 of the Water Code is amended to read:

12878.33. If any area or zone lies within more than one county, the department shall divide the amount of the estimate in the proportion of the acreage in each county, as modified to reflect any zones of benefit, as described in Section 12878.9.

SEC. 36. Section 12878.44 of the Water Code is amended to read:

12878.44. Money expended upon any unit during any fiscal year shall not exceed by more than 20 percent the amount of the estimate for that unit for that fiscal year, unless the department determines that expenditures that exceed that amount are necessary for emergency repairs or flood fighting. If in any fiscal year more money will be expended upon a unit than is, or will be, available from assessments or collections thereon derived from the maintenance area, the estimated

amount of the deficit shall be added to the estimate for that unit for the following fiscal years, and if less money will be expended than collected, the estimated amount of that excess shall be deducted from the estimate.

SEC. 37. Section 79509.6 is added to the Water Code, to read:

79509.6. (a) For the purposes of ensuring compliance with Section 79509, the California Bay-Delta Authority shall review regulations, guidelines, or criteria that are proposed by an implementing agency to carry out a grant program for projects and activities that meet the following criteria:

(1) The project is located within the CALFED solution area as defined in the CALFED final programmatic environmental impact statement/environmental impact report, dated July 2000.

(2) The project wholly or partially assists in the fulfillment of one or more of the goals of the CALFED Bay-Delta Program.

(b) Except for projects financed pursuant to Chapter 6 (commencing with Section 79545) or Chapter 10 (commencing with Section 79570), the California Bay-Delta Authority may review, and comment to the appropriate implementing agency with regard to, a proposal to award a grant pursuant to this division on behalf of a project that meets the criteria set forth in subdivision (a) for the purposes of determining whether or not the project is consistent with the CALFED Programmatic Record of Decision.

(c) To avoid any delays in project awards, the opportunity for review by the California Bay-Delta Authority pursuant to subdivision (b) shall be incorporated into the grant program schedules established by the implementing agencies.

(d) For the purposes of this section, ''implementing agency'' has the same definition as that set forth in subdivision (h) of Section 79402.

SEC. 38. (a) A Program Timberland Environmental Impact Report (PTEIR) that is funded pursuant to Item 3540-001-6029 of Section 2.00 of the 2004 Budget Act shall only be for a project for hazardous fuel reduction.

(b) The removal of trees for hazardous fuel reduction shall be by the method of thinning from below, and shall be limited to trees that are 16 inches or less in diameter at breast height. A practice that reduces crown density on timberlands may be used only for the purpose of affecting fire behavior, and only if it is reasonably demonstrated that the likelihood of crown fire is reduced.

(c) A registered professional forester with the Department of Forestry and Fire Protection or on behalf of a private landowner, shall certify both of the following:

(1) The fuel reduction objectives were achieved for removal of surface fuels, brush, and ladder fuels, and were accomplished by means that are consistent with this section.

(2) For each PTEIR or sub-area within an area covered by a PTEIR, 80 percent or more of the treated landscape will have a posttreatment fuel load that will result in a flame length of four feet or less and a minimum of eight feet separation from the ground to the crown of live trees.

(d) For purposes of this section, ''hazardous fuel reduction'' means the application of practices to wildlands in which the primary impact to vegetation in the wildlands is the reduction of surface and ladder fuels. The practices include, but are not limited to, prescribed fire, and machine or hand piling for burning, pruning, and thinning.

SEC. 39. Of the funds available for the purposes of paragraph (1) of subdivision (c) of Section 5096.650 of the Public Resources Code, the sum of seven million eight hundred fifty thousand dollars ($7,850,000) is hereby appropriated from the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Fund, established pursuant to Section 5096.610 of the Public Resources Code, to the Secretary of the Resources Agency, for the purposes of awarding grants pursuant to paragraph (1) of subdivision (c) of Section 5096.650 of the Public Resources Code in accordance with Chapter 3.8 (commencing with Section 5750) of Division 5 of the Public Resources Code.

SEC. 40. Of the funds available for the purposes of Section 79541 of the Water Code, the sum of thirty million five hundred thousand dollars ($30,500,000) is hereby appropriated from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002, established by Section 79510 of the Water Code, to the Secretary of the Resources Agency for the purposes of awarding grants and program delivery pursuant to Section 79541 of the Water Code in accordance with Chapter 3.8 (commencing with Section 5750) of Division 5 of the Public Resources Code.

SEC. 41. Of the funds available to be appropriated pursuant to Section 79544 of the Water Code, nine million one hundred fifty thousand dollars ($9,150,000) is hereby appropriated from the Water Security, Clean Drinking Water, Coastal and Beach Protection Fund of 2002, which is established pursuant to Section 79510 of the Water Code, to the Secretary of the Resources Agency, for the purposes of making grants that are consistent with Section 79544 of the Water Code, pursuant to Section 5819.4 of the Public Resources Code.

SEC. 42. 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. 43. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to implement provisions of the 2004 Budget Act in a timely manner, it is necessary that this act take effect immediately.

CHAPTER 231

An act to amend Sections 20610, 21251.15, 21408, 21409, 21410, 21424, 21543, 22013.7, 75077, 75079, 75091, and 75104.4 of, to amend and renumber Section 20035.5 of, to add Sections 75031.5, 75109.1, 75506.6, and 75611.5 to, and to repeal Sections 21417, 75034.1, and 75094 of, the Government Code, relating to the Public Employees' Retirement System, and making an appropriation therefor.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 20035.5 of the Government Code, as added by Section 6 of Chapter 615 of the Statutes of 2003, is amended and renumbered to read:

20035.6. 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. 2. Section 20610 of the Government Code is amended to read:

20610. (a) 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.

(b) If a charter school chooses to participate in the system, all employees of the charter school who qualify for membership in the system shall be covered under the system and all provisions of this part shall apply in the same manner as if the charter school were a public school in the school district that granted the charter.

SEC. 3. Section 21251.15 of the Government Code is amended to read:

21251.15. (a) Notwithstanding any other provision of this part, when a member's account has been divided pursuant to Section 21290, and the nonmember has not effected a refund of accumulated contributions pursuant to Section 21292 prior to the member's effective date of retirement, and the nonmember has sufficient credited service to retire for service, the retirement allowance payable to a member who retires on or after January 1, 2004, shall be equal to the difference between (1) the allowance that would have been payable to the member had the division of the account not occurred and (2) the allowance payable to the nonmember on either (A) the effective date of the nonmember's retirement, or (B) if the nonmember has not retired on or before the member's effective date of retirement, the date the nonmember would have attained the age of 50 years, for service subject to Sections 21362.2, 21363.3, 21363.4, and 21363.8, and the date the nonmember would have attained the age of 55 years, or the nonmember's actual age if older than the age of 55 years on the effective date of the member's retirement, for all other service.

(b) If the nonmember retires prior to the effective date of the member's retirement, an actuarial adjustment shall also be made to the member's allowance to account for the benefits received by the nonmember spouse prior to the member's effective date of retirement.

(c) In no event may the member's retirement allowance payable under this section be less than the allowance that would otherwise be payable under this part.

SEC. 4. Section 21408 of the Government Code is amended to read:

21408. Upon the industrial disability retirement of a state miscellaneous member subject to Section 21151, the disability allowance shall be 50 percent of his or her final compensation plus an annuity purchased with his or her accumulated additional contributions, if any, or, if qualified for service retirement, he or she shall receive his or her service retirement allowance, if the allowance, after deducting the annuity, is greater.

SEC. 5. Section 21409 of the Government Code is amended to read:

21409. Upon the industrial disability retirement of a state miscellaneous member within Section 21151, or a state industrial member whose service is subject to Section 21076, the disability allowance shall be 50 percent of his or her final compensation plus an annuity purchased with his or her accumulated additional contribution, if any, or if qualified for service retirement, he or she shall receive his or her service retirement allowance, if the allowance, after deducting the annuity, is greater.

SEC. 6. Section 21410 of the Government Code is amended to read:

21410. Notwithstanding Sections 21406, 21407, 21408, 21409, and 21411, any state member who becomes subject to Section 21159 on or after January 1, 1993, and retires for industrial disability because of incapacity for the performance of duties in any employment with the state employer, as determined by the Department of Personnel Administration, shall receive a disability retirement allowance of 60 percent of the member's final compensation plus an annuity purchased with the member's accumulated additional contributions, if any, or, if qualified for service retirement, the member shall receive the service retirement allowance if the allowance, after deducting the annuity, is greater.

Benefits payable under this section are payable solely to state members employed in state bargaining units subject to Section 21159.

SEC. 7. Section 21417 of the Government Code is repealed.

SEC. 8. Section 21424 of the Government Code is amended to read:

21424. The nonindustrial disability retirement pension for state miscellaneous or state industrial service subject to Section 21076 shall be one of the following:

(a) Ninety percent of the factor applicable at the age of 65 years as set forth in Section 21076 multiplied by final compensation, multiplied by the number of years of service credited to him or her.

(b) If the nonindustrial disability retirement allowance computed under subdivision (a) does not exceed one-third of his or her final compensation, 90 percent of the benefit that would be payable to the member had the member continued in employment until the age of 65 years, but in that case the retirement allowance may not exceed one-third

of the final compensation. This subdivision is not applicable to members who have not been credited, at the time of retirement, with at least 10 years of state service.

(c) If the nonindustrial disability retirement allowance is derived from this section and Section 21423, and would otherwise exceed the maximums provided by these sections, the pension payable with respect to each section shall be reduced in the same proportion as the allowance bears to the total allowance computed as if there were no limit, so that the total of the pensions shall equal the maximum allowed.

(d) If qualified for service retirement, the member shall receive his or her service retirement allowance if that allowance is greater than the nonindustrial disability retirement allowance provided by this section.

SEC. 9. Section 21543 of the Government Code is amended to read:

21543. If payment of the special death benefit is stopped because of death of the surviving spouse or death, marriage, or attainment of the age of 22 years by a child before the sum of the monthly payment made, exclusive of the annuity derived from the accumulated additional contribution of the deceased, equals the basic death benefit, a lump sum equal to the difference shall be paid to the surviving children of the deceased member, share and share alike, or if there are no children, to the estate of the person last entitled to the allowance. In that event, the accumulated additional contributions of the deceased, as they were at his or her death, less the annuity paid as derived from those contributions, and plus interest credited to the accumulated additional contributions, shall be paid in the manner provided in this article for the payments of amounts due in the absence of a designated beneficiary.

SEC. 10. 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, 20423.5, and 20441 for the purposes of Section 218(d)(5)(A) of the Social Security Act (42 U.S.C. Sec. 418(d)(5)(A)).

SEC. 11. Section 75031.5 is added to the Government Code, to read:

75031.5. (a) A judge may elect, in writing filed with the Judges' Retirement System, to make contributions and receive service credit in this system for active service, performed prior to entering the system, of not less than one year in the Armed Forces of the United States or not less than one year in the Merchant Marine of the United States prior to January 1, 1950, excluding any period of that active service for which the judge is receiving, or is entitled to receive, a retirement allowance from any other retirement system supported wholly or in part by public funds. The service credit for that service may be granted on the basis of one year of credit for each year of credited service in this system, but may not exceed a total of four years of service credit regardless of the number

of years of either that service or subsequent judicial service. A judge electing to receive credit for that service shall have at least one year of judicial service credited on the date of election or the date of retirement. If the service described in this subdivision terminated with a dishonorable discharge, service credit in the system may not be granted under this section.

(b) For purposes of this section, a judge means a judge as defined in Section 75002 or a judge who has retired pursuant to Section 75025 or has elected a deferred retirement subject to Section 75033.5.

(c) The retirement allowance of a retired judge who elects to receive service credit pursuant to this section shall be increased only with respect to the allowance payable on and after the date of election.

(d) A judge who elects to receive credit for service pursuant to this section shall contribute to the Judges' Retirement Fund a sum equal to the actuarial present value of the increase in benefits due to the additional service, as determined by the chief actuary and approved by the board.

(e) An election by a judge to receive credit for service under this section shall be effective only if accompanied by a lump-sum payment or an authorization for payment, other than a lump-sum payment, in accordance with regulations adopted by the board.

SEC. 12. Section 75034.1 of the Government Code is repealed.

SEC. 13. Section 75077 of the Government Code is amended to read:

75077. The surviving spouse of a judge who qualifies, as prescribed in Section 75075, to receive the benefits accorded by this article and who dies during retirement shall receive, until death, an allowance equal to one-half of the retirement allowance that would be payable to the judge if he or she were living and receiving the benefits accorded by this article.

SEC. 14. Section 75079 of the Government Code is amended to read:

75079. (a) When a judge elects and becomes entitled to receive the benefits accorded by this article, he or she does not have the right to select an optional settlement under the provisions of Article 3.5 (commencing with Section 75070) of this chapter.

(b) When a judge becomes entitled on and after January 1, 1987, to receive the benefits accorded by this article, the judge may instead elect an actuarially reduced retirement allowance payable for life and if the judge dies before he or she receives the amount of his or her accumulated contributions at retirement, the remaining unpaid amount of his or her accumulated contributions shall be paid to his or her designated beneficiary, if he or she has so designated, and if none, to his or her estate.

The election shall be made in writing and filed with the Judges' Retirement System prior to the making of the first payment on account of any retirement allowance.

(c) The surviving spouse of a judge who qualifies, as prescribed in Section 75075, to receive the benefits accorded by Section 75076 but who elected to receive the actuarially reduced retirement allowance as provided in subdivision (b) and who dies during retirement shall receive, until death, an allowance equal to one-half of the retirement allowance that would have been payable to the judge if he or she were living and had elected to receive the benefits accorded by Section 75076.

SEC. 15. Section 75091 of the Government Code is amended to read:

75091. (a) If a judge who is credited with at least 10 years of service but less than 20 years of service under this chapter dies prior to retiring under this chapter, and while serving as a judge, his or her surviving spouse shall receive a monthly allowance, payable from the Judges' Retirement Fund, equal to 1.625 percent of the monthly salary payable, at the time payment of the allowance falls due, to the judge holding the judicial office to which the deceased judge was last elected or appointed multiplied by the number of years of service of the deceased judge.

(b) If a judge who is credited with 20 years or more of service under this chapter dies prior to retiring under this chapter, and while serving as a judge, his or her surviving spouse shall receive a monthly allowance, payable from the Judges' Retirement Fund, equal to $37^1/_2$ percent of the monthly salary payable, at the time the payment of the allowance falls due, to the judge holding the judicial office to which the deceased judge was last elected or appointed.

(c) For the purposes of this section any fraction of a year equals one year. The allowance is payable commencing upon the death of the judge and continuing until the death of the surviving spouse.

(d) If the surviving spouse is eligible for an allowance under Section 75104.4, the allowance provided for by Section 75104.4 shall be paid and no allowance shall be made under this article. If an allowance is paid under this section, no payment shall be made pursuant to Section 75104 or 75104.5.

SEC. 16. Section 75094 of the Government Code is repealed.

SEC. 17. Section 75104.4 of the Government Code is amended to read:

75104.4. (a) The surviving spouse of any judge who dies on or after January 1, 1954, but before retirement and after becoming eligible for retirement pursuant to Section 75025 or 75033 or who dies on or after January 1, 1954, while serving as judge and has served as a judge for 30 years, shall receive an allowance equal to one-half of the amount of the unmodified retirement allowance that would be payable to the judge were he or she living and retired under this chapter. The allowance is payable commencing upon the day following the date of the death of the judge and continuing until the death of the surviving spouse. If, pursuant

to this section, an allowance is paid to the surviving spouse of a judge, no payment shall be made pursuant to Section 75104 or 75104.5.

(b) The Legislature hereby finds and declares that the payment of allowances to the surviving spouse of a judge pursuant to this section, as amended at the 1959 Regular Session of the Legislature, serves a public purpose in that it promotes the public welfare by encouraging experienced jurists to continue their service in the expectation that the Legislature will fairly provide for their surviving spouses under changing circumstances, as the Legislature is now doing for spouses of judges who have heretofore died. Continued service by, and increased efficiency of, judges secure in this knowledge will more than compensate the state for any increased expense for allowances to surviving spouses provided by the amendment enacted at the 1959 session of the Legislature.

SEC. 18. Section 75109.1 is added to the Government Code, to read:

75109.1. (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) Notwithstanding Section 75109, 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. 19. Section 75506.6 is added to the Government Code, to read:

75506.6. (a) A judge may elect, in writing filed with the Judges' Retirement System II, to make contributions and receive service credit in this system for active service, performed prior to entering this system, of not less than one year in the Armed Forces of the United States or not less than one year in the Merchant Marine of the United States prior to January 1, 1950, excluding any period of that active service for which the judge is receiving, or is entitled to receive, a retirement allowance from any other retirement system supported wholly or in part by public

funds. The service credit for that service shall be granted on the basis of one year of credit for each year of credited service in this system, but may not exceed a total of four years of service credit regardless of the number of years of either that service or subsequent judicial service. A judge electing to receive credit for that service shall have at least one year of judicial service credited on the date of the election or the date of retirement. If the service described in this subdivision terminated with a dishonorable discharge, service credit in the system may not be granted under this section.

(b) For purposes of this section, a judge means a judge as defined under Section 75502 or a judge who has retired under Section 75521 or 75522.

(c) The retirement allowance of a retired judge who elects to receive service credit pursuant to this section shall be increased only with respect to the allowance payable on and after the date of election.

(d) A judge who elects to receive credit for service pursuant to this section shall contribute to the Judges' Retirement Fund II a sum equal to the actuarial present value of the increase in benefits due to the additional service, as determined by the chief actuary and approved by the board.

(e) An election by a judge to receive credit for service under this section shall be effective only if accompanied by a lump-sum payment or an authorization for payment, other than a lump-sum payment, in accordance with regulations adopted by the board.

SEC. 20. Section 75611.5 is added to the Government Code, to read:

75611.5. (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) Notwithstanding Section 75611, 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.

CHAPTER 232

An act to amend Section 19596 of the Business and Professions Code, relating to horse racing, and making an appropriation therefor.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 19596 of the Business and Professions Code is amended to read:

19596. (a) Notwithstanding any other provision of law, the board may do any of the following:

(1) Authorize a licensed harness racing association that is conducting a live racing meeting in this state to accept wagers on the full card of races conducted by another racing association on the day that other association conducts the Breeder's Crown Stakes, the Meadowlands Pace, the Hambletonian, or the North American Cup.

(2) Authorize a licensed quarter horse racing association that is conducting a live racing meeting in this state to accept wagers on races conducted by the racing association that conducts the American Quarter Horse Racing Challenge, if the races are conducted on the same day as the American Quarter Horse Racing Challenge.

(3) Authorize the inclusion of wagers authorized pursuant to this section in the parimutuel pools of the out-of-state association that conducts the races on which the wagers are placed.

(b) The board authorization may be granted under this section only if both of the following conditions are met:

(1) The authorization complies with federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(2) Wagering is offered only within the racing enclosure and only within seven days of the running of the out-of-state race.

CHAPTER 233

An act to amend Sections 60601, 60602, 60607, 60611, 60641, and 60644 of, to amend and repeal Section 60642 of, and to amend, repeal, and add Sections 60603, 60604, 60605, 60605.6, 60606, 60640, 60643, and 60643.1 of, the Education Code, relating to pupil assessment.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 60601 of the Education Code is amended to read:

60601. This chapter shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends that date.

SEC. 2. Section 60602 of the Education Code is amended to read:

60602. (a) It is the intent of the Legislature in enacting this chapter to provide a system of individual assessment of pupils that has the primary purpose of assisting teachers, administrators, pupils, and their parents, to improve teaching and learning. In order to accomplish these goals, the Legislature finds and declares that California should adopt a coordinated and consolidated testing program to do all of the following:

(1) First and foremost, provide information on the academic status and progress of individual pupils to those pupils, their parents, and their teachers. This information should be designed to assist in the improvement of teaching and learning in California public classrooms. The Legislature recognizes that, in addition to statewide assessments that will occur as specified in this chapter, school districts will conduct additional ongoing pupil diagnostic assessment and provide information regarding pupil performance based on those assessments on a regular basis to parents or guardians and schools. The Legislature further recognizes that local diagnostic assessment is a primary mechanism through which academic strengths and weaknesses are identified.

(2) Develop and adopt a set of statewide academically rigorous content standards and performance standards in all major subject areas to serve as the basis for assessing the academic achievement of individual pupils, as well as for schools, school districts, and for the California education system as a whole. The performance standards shall be designed to lead to specific grade level benchmarks of academic achievement for each subject area tested within each grade level and shall be based on the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century.

(3) Ensure that all assessment procedures, items, instruments, and scoring systems are independently reviewed to ensure that they meet high standards of statistical reliability and validity and that they do not use procedures, items, instruments, or scoring practices that are racially, culturally, or gender biased.

(4) Provide information to pupils, parents or guardians, teachers, schools, and school districts on a timely basis so that the information can be used to further the development of the pupil and to improve the educational program.

(5) Develop assessments that are comparable to the National Assessment of Educational Progress and other national and international assessment efforts, so that California's local and state test results are reported in a manner that corresponds to the national test results. Test results should be reported in terms describing a pupil's academic performance in relation to the statewide academically rigorous content and performance standards adopted by the State Board of Education and in terms of employment skills possessed by the pupil, in addition to being reported as numerical or percentile scores.

(6) Assess pupils for a broad range of academic skills and knowledge including both basic academic skills and the ability of pupils to apply those skills.

(7) Include an appropriate balance of types of assessment instruments, including, but not limited to, multiple choice questions, short answer questions, and assessments of applied academic skills.

(8) Minimize the amount of instructional time devoted to assessments administered pursuant to this chapter.

(b) It is the intent of the Legislature, pursuant to this article, to begin a planning and implementation process to enable the Superintendent of Public Instruction to accomplish the goals set forth in this section as soon as feasible.

(c) It is the intent of the Legislature that parents, classroom teachers, other educators, governing board members of school districts, and the public be involved, in an active and ongoing basis, in the design and implementation of the statewide pupil assessment program and the development of assessment instruments.

(d) It is the intent of the Legislature, insofar as is practically feasible and following the completion of annual testing, that the content, test structure, and test items in the assessments that are part of the Standardized Testing and Reporting Program become open and transparent to teachers, parents, and pupils, to assist all the stakeholders in working together to demonstrate improvement in pupil academic achievement. A planned change in annual test content, format, or design, should be made available to educators and the public well before the beginning of the school year in which the change will be implemented.

(e) It is the intent of the Legislature that the results of the California Standards Tests be available for use, after appropriate validation, academic credit, or placement and admissions processes, or both, at postsecondary educational institutions.

SEC. 3. Section 60603 of the Education Code is amended to read:

60603. (a) As used in this chapter:

(1) ''Achievement test'' means any standardized test that measures the level of performance that a pupil has achieved in the core curriculum areas.

(2) ''Assessment of applied academic skills'' means a form of assessment that requires pupils to demonstrate their knowledge of, and ability to apply, academic knowledge and skills in order to solve problems and communicate. It may include, but is not limited to, writing an essay response to a question, conducting an experiment, or constructing a diagram or model. An assessment of applied academic skills may not include assessments of personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self-esteem.

(3) ''Basic academic skills'' means those skills in the subject areas of reading, spelling, written expression, and mathematics that provide the necessary foundation for mastery of more complex intellectual abilities, including the synthesis and application of knowledge.

(4) ''Content standards'' means the specific academic knowledge, skills, and abilities that all public schools in this state are expected to teach and all pupils expected to learn in each of the core curriculum areas, at each grade level tested.

(5) ''Core curriculum areas'' means the areas of reading, writing, mathematics, history-social science, and science.

(6) ''Diagnostic assessment'' means interim assessments of the current level of achievement of a pupil that serves both of the following purposes:

(A) The identification of particular academic standards or skills a pupil has or has not yet achieved.

(B) The identification of possible reasons that a pupil has not yet achieved particular academic standards or skills.

(7) ''Direct writing assessment'' means an assessment of applied academic skills that requires pupils to use written expression to demonstrate writing skills, including writing mechanics, grammar, punctuation, and spelling.

(8) ''End of course exam'' means a comprehensive and challenging assessment of pupil achievement in a particular subject area or discipline.

(9) ''Performance standards'' are standards that define various levels of competence at each grade level in each of the curriculum areas for

which content standards are established. Performance standards gauge the degree to which a pupil has met the content standards and the degree to which a school or school district has met the content standards.

(10) ''Publisher'' means a commercial publisher or any other public or private entity, other than the department, which is able to provide tests or test items that meet the requirements of this chapter.

(11) ''Statewide pupil assessment program'' means the systematic achievement testing of pupils in grades 2 to 11, inclusive, pursuant to the standardized testing and reporting program under Article 4 (commencing with Section 60640) and the assessment of basic academic skills and applied academic skills, administered to pupils in grade levels specified in subdivision (c) of Section 60605, required by this chapter in all schools within each school district by means of tests designated by the State Board of Education.

(b) 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 the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 60603 is added to the Education Code, to read:

60603. (a) As used in this chapter:

(1) ''Achievement test'' means any standardized test that measures the level of performance that a pupil has achieved in the core curriculum areas.

(2) ''Assessment of applied academic skills'' means a form of assessment that requires pupils to demonstrate their knowledge of, and ability to apply, academic knowledge and skills in order to solve problems and communicate. It may include, but is not limited to, writing an essay response to a question, conducting an experiment, or constructing a diagram or model. An assessment of applied academic skills may not include assessments of personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self-esteem.

(3) ''Basic academic skills'' means those skills in the subject areas of reading, spelling, written expression, and mathematics that provide the necessary foundation for mastery of more complex intellectual abilities, including the synthesis and application of knowledge.

(4) ''Content standards'' means the specific academic knowledge, skills, and abilities that all public schools in this state are expected to teach and all pupils expected to learn in each of the core curriculum areas, at each grade level tested.

(5) ''Core curriculum areas'' means the areas of reading, writing, mathematics, history-social science, and science.

(6) ''Diagnostic assessment'' means frequent, interim assessments of the current level of achievement of a pupil that serves both of the following purposes:

(A) The identification of particular academic standards or skills a pupil has or has not yet achieved.

(B) The identification of possible reasons that a pupil has not yet achieved particular academic standards or skills.

(7) ''Direct writing assessment'' means an assessment of applied academic skills that requires pupils to use written expression to demonstrate writing skills, including writing mechanics, grammar, punctuation, and spelling.

(8) ''End of course exam'' means a comprehensive and challenging assessment of pupil achievement in a particular subject area or discipline.

(9) ''Performance standards'' are standards that define various levels of competence at each grade level in each of the curriculum areas for which content standards are established. Performance standards gauge the degree to which a pupil has met the content standards and the degree to which a school or school district has met the content standards.

(10) ''Publisher'' means a commercial publisher or any other public or private entity, other than the department, which is able to provide tests or test items that meet the requirements of this chapter.

(11) ''Statewide pupil assessment program'' means the systematic achievement testing of pupils in grades 3 to 11, inclusive, pursuant to the standardized testing and reporting program under Article 4 (commencing with Section 60640) and the assessment of basic academic skills and applied academic skills, administered to pupils in grade levels specified in subdivision (c) of Section 60605, required by this chapter in all schools within each school district by means of tests designated by the State Board of Education.

(b) This section shall become operative on July 1, 2007.

SEC. 5. Section 60604 of the Education Code is amended to read:

60604. (a) The Superintendent of Public Instruction shall design and implement, consistent with the timetable and plan required pursuant to subdivision (b), a statewide pupil assessment program consistent with the testing requirements of this article in accordance with the objectives set forth in Section 60602. That program shall include all of the following:

(1) A plan for producing valid, reliable, and comparable individual pupil scores in grades 2 to 11, inclusive, and a comprehensive analysis of these scores based on the results of the achievement test designated by the State Board of Education that assesses a broad range of basic academic skills pursuant to the Standardized Testing and Reporting

(STAR) Program established by Article 4 (commencing with Section 60640).

(2) A method of working with publishers to ensure valid, reliable, and comparable individual, grade-level, school-level, district-level, county-level, and statewide scores in grades 2 to 11, inclusive, that is based on the achievement test designated pursuant to subdivision (b) of Section 60605.

(3) Statewide academically rigorous content and performance standards that reflect the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century. These skills shall not include personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self-esteem.

(4) A statewide system that provides the results of testing in a manner that reflects the degree to which pupils are achieving the academically rigorous content and performance standards adopted by the state board.

(5) The alignment of assessment with the statewide academically rigorous content and performance standards adopted by the state board.

(6) The active, ongoing involvement of parents, classroom teachers, administrators, other educators, governing board members of school districts, and the public in all phases of the design and implementation of the statewide pupil assessment program.

(7) The development of a contract or contracts with a publisher or publishers, after the approval of statewide academically rigorous content standards by the state board, for the development of performance standards and assessments of applied academic skills designed to test pupils' knowledge of academic skills and abilities to apply that knowledge and those skills in order to solve problems and communicate.

(b) The superintendent shall develop and annually update for the Legislature a five-year cost projection, implementation plan, and timetable for implementing the program described in subdivision (a). The annual update shall be submitted on or before March 1 of each year to the chairperson of the fiscal subcommittee considering budget appropriations in each house. The update shall explain any significant variations from the five-year cost projection for the current year budget and the proposed budget.

(c) The superintendent shall provide each school district with guidelines for professional development that are designed to assist classroom teachers to use the results of the assessments administered pursuant to this chapter to modify instruction for the purpose of improving pupil learning. These guidelines shall be developed in consultation with classroom teachers and approved by the state board before dissemination.

(d) The superintendent and the state board shall consider comments and recommendations from school districts and the public in the development, adoption, and approval of assessment instruments.

(e) The results of the achievement test administered pursuant to Article 4 (commencing with Section 60640) shall be returned to the school district within the period of time specified by the state board.

(f) 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 the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 60604 is added to the Education Code, to read:

60604. (a) The Superintendent of Public Instruction shall design and implement, consistent with the timetable and plan required pursuant to subdivision (b), a statewide pupil assessment program consistent with the testing requirements of this article in accordance with the objectives set forth in Section 60602. That program shall include all of the following:

(1) A plan for producing valid, reliable, and comparable individual pupil scores in grades 3 to 11, inclusive, and a comprehensive analysis of these scores based on the results of the achievement test designated by the State Board of Education that assesses a broad range of basic academic skills pursuant to the Standardized Testing and Reporting (STAR) Program established by Article 4 (commencing with Section 60640).

(2) A method of working with publishers to ensure valid, reliable, and comparable individual, grade-level, school-level, district-level, county-level, and statewide scores in grades 3 to 11, inclusive, that is based on the achievement test designated pursuant to subdivision (b) of Section 60605.

(3) Statewide academically rigorous content and performance standards that reflect the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century. These skills shall not include personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self-esteem.

(4) A statewide system that provides the results of testing in a manner that reflects the degree to which pupils are achieving the academically rigorous content and performance standards adopted by the state board.

(5) The alignment of assessment with the statewide academically rigorous content and performance standards adopted by the state board.

(6) The active, ongoing involvement of parents, classroom teachers, administrators, other educators, governing board members of school districts, and the public in all phases of the design and implementation of the statewide pupil assessment program.

(7) The development of a contract or contracts with a publisher or publishers, after the approval of statewide academically rigorous content standards by the state board, for the development of performance standards and assessments of applied academic skills designed to test pupils' knowledge of academic skills and abilities to apply that knowledge and those skills in order to solve problems and communicate.

(b) The superintendent shall develop and annually update for the Legislature a five-year cost projection, implementation plan, and timetable for implementing the program described in subdivision (a). The annual update shall be submitted on or before March 1 of each year to the chairperson of the fiscal subcommittee considering budget appropriations in each house. The update shall explain any significant variations from the five-year cost projection for the current year budget and the proposed budget.

(c) The superintendent shall provide each school district with guidelines for professional development that are designed to assist classroom teachers to use the results of the assessments administered pursuant to this chapter to modify instruction for the purpose of improving pupil learning. These guidelines shall be developed in consultation with classroom teachers and approved by the state board before dissemination.

(d) The superintendent and the state board shall consider comments and recommendations from school districts and the public in the development, adoption, and approval of assessment instruments.

(e) The results of the achievement test administered pursuant to Article 4 (commencing with Section 60640) shall be returned to the school district within the period of time specified by the state board.

(f) This section shall become operative July 1, 2007.

SEC. 7. Section 60605 of the Education Code is amended to read:

60605. (a) (1) (A) Not later than January 1, 1998, the State Board of Education shall adopt statewide academically rigorous content standards, pursuant to the recommendations of the Commission for the Establishment of Academic Content and Performance Standards, in the core curriculum areas of reading, writing, and mathematics to serve as the basis for assessing the academic achievement of individual pupils and of schools, school districts, and the California education system. Not later than November 1, 1998, the state board shall adopt these standards in the core curriculum areas of history/social science and science.

(B) The state board shall adopt statewide performance standards in the core curriculum areas of reading, writing, mathematics, history/social science, and science based on the recommendations made by the Superintendent of Public Instruction and a contractor or contractors.

(C) The state board shall require the contractor or contractors to submit performance standards to the superintendent and the state board not later than a specified date that allows sufficient opportunity for the superintendent to make a recommendation to the state board and for the state board to conduct regional hearings prior to the adoption of the performance standards.

(2) (A) The state board may modify any proposed content standards or performance standards prior to adoption and may adopt content and performance standards in individual core curriculum areas as those standards are submitted to the board. The state performance standards shall be established against specific grade level benchmarks of academic achievement for each subject area tested and shall be based on the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century. These skills shall not include personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self-esteem. The standards adopted pursuant to this section shall be for the purpose of guiding state decisions regarding the development, adoption, and approval of assessment instruments pursuant to this chapter and does not mandate any actions or activities by school districts.

(B) Because these standards are models, the adoption of these standards is not subject to the Administrative Procedure Act. This subparagraph is declaratory of existing law.

(3) Before adopting academic content and performance standards, the state board shall hold regional hearings for the purpose of giving parents and other members of the public the opportunity to comment on the proposed standards.

(b) (1) The state board shall require the department to notify publishers of the opportunity to submit, for consideration by the state board pursuant to Section 60642, tests of achievement that include all of the basic academic skills identified in subdivision (c) of Section 60603 in grades 2 to 8, inclusive, and the core curriculum areas of English and language arts, mathematics, and science in grades 9 to 11, inclusive.

(2) The superintendent shall recommend to the state board which achievement test to adopt pursuant to subdivision (b) of Section 60642.

(c) (1) The state board shall ensure that the statewide assessment system adopted pursuant to this chapter yields valid, reliable individual pupil scores and, where applicable, aggregate school scores, school district scores, and statewide scores of pupils and assesses basic academic skills and content standards, including the use of a direct writing assessment or other applied academic skills if deemed valid and reliable and if resources are made available for their use.

(2) This subdivision does not prevent the state board from developing or adopting an assessment instrument that also contains assessments of basic academic skills.

(d) To the extent feasible and as otherwise required, the state board shall ensure that assessments developed, or contracted for pursuant to Section 60642.5, by the state are aligned with the statewide content and performance standards adopted pursuant to subdivision (a). The department, with the approval of the state board, shall periodically contract for a review of the achievement test for conformance with these standards.

(e) After adopting statewide content and performance standards, the state board shall review the existing curriculum frameworks for conformity with the new statewide standards and shall modify the curriculum frameworks where appropriate to bring them into alignment with the standards.

(f) The state board shall adopt regulations for the conduct and administration of the testing and assessment program.

(g) The state board shall adopt a regulation for minimum security procedures that test and assessment publishers and school districts must follow to ensure the security and integrity of test and assessment questions and materials.

(h) This section shall become inoperative on July 1, 2007, and, as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 8. Section 60605 is added to the Education Code, to read:

60605. (a) (1) (A) Not later than January 1, 1998, the State Board of Education shall adopt statewide academically rigorous content standards, pursuant to the recommendations of the Commission for the Establishment of Academic Content and Performance Standards, in the core curriculum areas of reading, writing, and mathematics to serve as the basis for assessing the academic achievement of individual pupils and of schools, school districts, and the California education system. Not later than November 1, 1998, the state board shall adopt these standards in the core curriculum areas of history/social science and science.

(B) The state board shall adopt statewide performance standards in the core curriculum areas of reading, writing, mathematics, history/social science, and science based on the recommendations made by the superintendent and a contractor or contractors.

(C) The state board shall require the contractor or contractors to submit performance standards to the superintendent and the state board not later than a specified date that allows sufficient opportunity for the superintendent to make a recommendation to the state board and for the

state board to conduct regional hearings prior to the adoption of the performance standards.

(2) (A) The state board may modify any proposed content standards or performance standards prior to adoption and may adopt content and performance standards in individual core curriculum areas as those standards are submitted to the state board. The performance standards shall be established against specific grade level benchmarks of academic achievement for each subject area tested and shall be based on the knowledge and skills that pupils will need in order to succeed in the information-based, global economy of the 21st century. These skills shall not include personal behavioral standards or skills, including, but not limited to, honesty, sociability, ethics, or self-esteem. The standards adopted pursuant to this section shall be for the purpose of guiding state decisions regarding the development, adoption, and approval of assessment instruments pursuant to this chapter and shall not be construed to mandate any actions or activities by school districts.

(B) Because these standards are models, the adoption of these standards is not subject to the Administrative Procedure Act. This subparagraph is declaratory of existing law.

(3) Before adopting academic content and performance standards, the state board shall hold regional hearings for the purpose of giving parents and other members of the public the opportunity to comment on the proposed standards.

(b) (1) The state board shall require the department to notify publishers of the opportunity to submit, for consideration by the state board pursuant to Section 60642, tests of achievement that include all of the basic academic skills identified in subdivision (c) of Section 60603 in grades 3 to 8, inclusive, and the core curriculum areas of English and language arts, mathematics, and science in grades 9 to 11, inclusive.

(2) The superintendent shall recommend to the state board which achievement test to adopt pursuant to subdivision (b) of Section 60642.

(c) (1) The state board shall ensure that the statewide assessment system adopted pursuant to this chapter yields valid, reliable individual pupil scores and, where applicable, aggregate school scores, school district scores, and statewide scores of pupils and assesses basic academic skills and content standards, including the use of a direct writing assessment or other applied academic skills if deemed valid and reliable and if resources are made available for their use.

(2) This subdivision does not prevent the state board from developing or adopting an assessment instrument that also contains assessments of basic academic skills.

(d) To the extent feasible and as otherwise required, the state board shall ensure that assessments developed, or contracted for pursuant to

Section 60642.5, by the state are aligned with the statewide content and performance standards adopted pursuant to subdivision (a). The department, with the approval of the state board, shall periodically contract for a review of the achievement test for conformance with these standards.

(e) After adopting statewide content and performance standards, the state board shall review the existing curriculum frameworks for conformity with the new statewide standards and shall modify the curriculum frameworks where appropriate to bring them into alignment with the standards.

(f) The state board shall adopt regulations for the conduct and administration of the testing and assessment program.

(g) The state board shall adopt a regulation for minimum security procedures that test and assessment publishers and school districts must follow to ensure the security and integrity of test and assessment questions and materials.

(h) This section shall become operative July 1, 2007.

SEC. 9. Section 60605.6 of the Education Code is amended to read:

60605.6. Subject to the availability of funds in the annual Budget Act for this purpose, the Superintendent of Public Instruction, upon approval of the State Board of Education, shall contract for the development and distribution of workbooks, as follows:

(a) One workbook to be distributed to all pupils in the 10th grade. This workbook shall contain information on the proficiency levels that must be demonstrated by pupils on the high school exit examination described in Chapter 9 (commencing with Section 60850). The workbook also shall contain sample questions, with explanations describing how these sample questions test pupil knowledge of the language arts and mathematics content standards adopted by the state board pursuant to Section 60605.

(b) Separate workbooks for each of grades 2 to 11, inclusive. Each pupil in grades 2 to 11, inclusive, who is required to take the achievement tests described in Section 60642 or Section 60642.5 shall receive a copy of the workbook designed for the same grade level in which the pupil is enrolled. These workbooks shall contain material to assist pupils and their parents with standards-based learning, including the grade appropriate academic content standards adopted by the state board pursuant to Section 60605 and sample questions that require knowledge of these standards to answer. The workbooks also shall describe how the sample questions test knowledge of the state board adopted academic content standards.

(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 the dates on which it becomes inoperative and is repealed.

SEC. 10. Section 60605.6 is added to the Education Code, to read:

60605.6. Subject to the availability of funds in the annual Budget Act for this purpose, the Superintendent of Public Instruction, upon approval of the State Board of Education, shall contract for the development and distribution of workbooks, as follows:

(a) One workbook to be distributed to all pupils in the 10th grade. This workbook shall contain information on the proficiency levels that must be demonstrated by pupils on the high school exit examination described in Chapter 9 (commencing with Section 60850). The workbook also shall contain sample questions, with explanations describing how these sample questions test pupil knowledge of the language arts and mathematics content standards adopted by the state board pursuant to Section 60605.

(b) Separate workbooks for each of grades 3 to 11, inclusive. Each pupil in grades 3 to 11, inclusive, who is required to take the achievement tests described in Section 60642 or Section 60642.5 shall receive a copy of the workbook designed for the same grade level in which the pupil is enrolled. These workbooks shall contain material to assist pupils and their parents with standards-based learning, including the grade appropriate academic content standards adopted by the state board pursuant to Section 60605 and sample questions that require knowledge of these standards to answer. The workbooks also shall describe how the sample questions test knowledge of the state board adopted academic content standards.

(c) This section shall become operative July 1, 2007.

SEC. 11. Section 60606 of the Education Code is amended to read:

60606. (a) After designating a test of academic achievement for use in grades 2 to 11, inclusive, pursuant to Section 60642, or adopting an assessment of applied academic skills for use in grades 4, 5, 8, and 10 pursuant to Section 60605, the State Board of Education shall submit each of those two instruments when designated or adopted to the Statewide Pupil Assessment Review Panel, which is hereby established, for review by the panel.

(b) The panel shall consist of six members. Three members shall be appointed by the Governor, one member shall be appointed by the Senate Committee on Rules, one member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the superintendent. A majority of the panel shall consist of parents whose children attend public schools in the state in kindergarten and grades 1 to 12, inclusive.

(c) Panel members shall serve two-year terms, without compensation. No panel member shall serve more than two consecutive terms.

(d) The panel shall review the two instruments specified in subdivision (a) in order to ensure that the content of the instruments complies with the requirements of Section 60614. Notwithstanding any other provision of law, the panel may meet in closed session with a publisher for the purpose of addressing questions and clarifying issues that relate to ensuring that the content of the publisher's test or assessment, as the case may be, comply with the requirements of Section 60614.

(e) The panel shall report its findings and recommendations to the state board within 10 days of its receipt of each instrument. If the panel fails to report within the required 10 days, the test or assessment shall be deemed acceptable to the panel.

(f) 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 the dates on which it becomes inoperative and is repealed.

SEC. 12. Section 60606 is added to the Education Code, to read:

60606. (a) After designating a test of academic achievement for use in grades 3 to 11, inclusive, pursuant to Section 60642, or adopting an assessment of applied academic skills for use in grades 4, 5, 8, and 10 pursuant to Section 60605, the State Board of Education shall submit each of those two instruments when designated or adopted to the Statewide Pupil Assessment Review Panel, which is hereby established, for review by the panel.

(b) The panel shall consist of six members. Three members shall be appointed by the Governor, one member shall be appointed by the Senate Committee on Rules, one member shall be appointed by the Speaker of the Assembly, and one member shall be appointed by the Superintendent of Public Instruction. A majority of the panel shall consist of parents whose children attend public schools in the state in kindergarten and grades 1 to 12, inclusive.

(c) Panel members shall serve two-year terms, without compensation. No panel member shall serve more than two consecutive terms.

(d) The panel shall review the two instruments specified in subdivision (a) in order to ensure that the content of the instruments complies with the requirements of Section 60614. Notwithstanding any other provision of law, the panel may meet in closed session with a publisher for the purpose of addressing questions and clarifying issues that relate to ensuring that the content of the publisher's test or assessment, as the case may be, comply with the requirements of Section 60614.

(e) The panel shall report its findings and recommendations to the state board within 10 days of its receipt of each instrument. If the panel

fails to report within the required 10 days, the test or assessment shall be deemed acceptable to the panel.

(f) This section shall become operative July 1, 2007.

SEC. 13. Section 60607 of the Education Code is amended to read:

60607. (a) Each pupil shall have an individual record of accomplishment by the end of grade 12 that includes the results of the achievement test required and administered annually as part of the Standardized Testing and Reporting (STAR) Program established pursuant to Article 4 (commencing with Section 60640), results of end-of-course exams he or she has taken, and the vocational education certification exams he or she chose to take.

(b) It is the intent of the Legislature that school districts and schools use the results of the academic achievement tests administered annually as part of the statewide pupil assessment program to provide support to pupils and parents or guardians in order to assist pupils in strengthening their development as learners, and thereby to improve their academic achievement and performance in subsequent assessments.

(c) (1) Any pupil results or a record of accomplishment shall be private, and may not be released to any person, other than the pupil's parent or guardian and a teacher, counselor, or administrator directly involved with the pupil, without the express written consent of either the parent or guardian of the pupil if the pupil is a minor, or the pupil if the pupil has reached the age of majority or is emancipated.

(2) (A) Notwithstanding paragraph (1), a pupil or his or her parent or guardian may authorize the release of pupil results or a record of accomplishment to a postsecondary educational institution for the purposes of credit, placement, or admission.

(B) Notwithstanding paragraph (1), the results of an individual pupil on the California Standards Test may be released to a postsecondary educational institution for the purposes of credit, placement, or admission.

SEC. 14. Section 60611 of the Education Code is amended to read:

60611. (a) A city, county, city and county, district superintendent of schools, or principal or teacher of any elementary or secondary school, including a charter school shall carry on any program of specific preparation of pupils for the statewide pupil assessment program or a particular test used therein.

(b) City, county, city and county, district superintendent of schools, principal, teacher of an elementary and secondary school, including a charter school, may use instructional materials provided by the department or its agents in the academic preparation of pupils for the statewide pupil assessment if those instructional materials are embedded in an instructional program that is intended to improve pupil learning.

SEC. 15. Section 60640 of the Education Code, as added by Chapter 773 of the Statutes of 2003, is amended to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 2004–05 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer to each of its pupils in grades 3 and 7 the achievement test designated by the State Board of Education pursuant to Section 60642 and shall administer to each of its pupils in grades 2 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the state board in subdivision (b).

(d) The governing board of the school district may administer achievement tests in grades other than those required by subdivision (b) as it deems appropriate.

(e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

(f) (1) At the option of the school district, pupils with limited English proficiency who are enrolled in any of grades 2 to 11, inclusive, may take a second achievement test in their primary language. Primary language tests administered pursuant to this subdivision and subdivision (g) shall be subject to the requirements of subdivision (a) of Section 60641. These primary language tests shall produce individual pupil scores that are valid and reliable.

(2) Notwithstanding any other law, the state board shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 2 to 11, inclusive, pursuant to the process used for designation of the assessment chosen in the 1997–98 fiscal year, as specified in Sections 60642 and 60643, as applicable.

(3) (A) The department shall use funds made available pursuant to Title VI of the federal No Child Left Behind Act of 2001 and appropriated by the annual Budget Act for the purpose of developing and

adopting primary language assessments that are aligned to the state academic content standards. Subject to the availability of funds, primary language assessments shall be developed and adopted for reading/language arts and mathematics in the dominant primary language of limited-English-proficient pupils. The dominant primary language shall be determined by the count in the annual language census of the primary language of each limited-English-proficient pupil enrolled in the California public schools.

(B) Once a dominant primary language assessment is available for use for a specific grade level, it shall be administered in place of the assessment designated pursuant to paragraph (1) for that grade level.

(C) In choosing a contractor to develop a primary language assessment the State Board of Education shall consider the criteria for choosing a contractor or test publisher as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.

(D) Subject to the availability of funds, the assessments shall be developed in grade order starting with the lowest grade subject to the STAR Program.

(E) If the state board contracts for the development of primary language assessments or test items to augment an existing assessment, the state shall retain ownership rights to the assessment and the test items. With the approval of the state board, the department may license the test for use in other states subject to a compensation agreement approved by the Department of Finance.

(F) On or before January 1, 2006, the department shall submit to the Legislature a report on the development and implementation of the initial primary language assessments and recommendations on the development and implementation of future assessments and funding requirements.

(g) A pupil of limited English proficiency who is enrolled in any of grades 2 to 11, inclusive, shall be required to take a test in his or her primary language if a test is available, and if fewer than 12 months have elapsed after his or her initial enrollment in any public or nonpublic school in the state.

(h) (1) The Superintendent of Public Instruction shall apportion funds to school districts to enable school districts to meet the requirements of subdivisions (b), (f), and (g).

(2) The state board shall annually establish the amount of funding to be apportioned to school districts for each test administered and shall annually establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and the amount included in the annual Budget Act, and by

making allowance for the estimated costs to school districts for compliance with the requirements of subdivisions (b), (f), and (g).

(3) An adjustment to the amount of funding to be apportioned per test may not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(i) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (h), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202, for the applicable fiscal year, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202, for that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 2 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

(k) 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 the dates on which it becomes inoperative and is repealed.

SEC. 16. Section 60640 is added to the Education Code, to read:

60640. (a) There is hereby established the Standardized Testing and Reporting Program, to be known as the STAR Program.

(b) Commencing in the 2007–08 fiscal year and each fiscal year thereafter, and from the funds available for that purpose, each school district, charter school, and county office of education shall administer

to each of its pupils in grades 3 and 7 the achievement test designated by the State Board of Education pursuant to Section 60642 and shall administer to each of its pupils in grades 3 to 11, inclusive, the standards-based achievement test provided for in Section 60642.5. The state board shall establish a testing period to provide that all schools administer these tests to pupils at approximately the same time during the instructional year, except as necessary to ensure test security and to meet the final filing date.

(c) The publisher and the school district shall provide two makeup days for the testing of previously absent pupils within the testing period established by the state board in subdivision (b).

(d) The governing board of the school district may administer achievement tests in grades other than those required by subdivision (b) as it deems appropriate.

(e) Pursuant to paragraph (17) of subsection (a) of Section 1412 of Title 20 of the United States Code, individuals with exceptional needs, as defined in Section 56026, shall be included in the testing requirement of subdivision (b) with appropriate accommodations in administration, where necessary, and those individuals with exceptional needs who are unable to participate in the testing, even with accommodations, shall be given an alternate assessment.

(f) At the option of the school district, a pupil with limited English proficiency who is enrolled in any of grades 3 to 11, inclusive, may take a second achievement test in his or her primary language. Primary language tests administered pursuant to this subdivision and subdivision (g) shall be subject to the requirements of subdivision (a) of Section 60641. These primary language tests shall produce individual pupil scores that are valid and reliable. Notwithstanding any other law, the state board shall designate for use, as part of this program, a single primary language test in each language for which a test is available for grades 3 to 11, inclusive, pursuant to the process used for designation of the assessment chosen in the 1997–98 fiscal year, as specified by Sections 60642 and 60643, and as specified by Section 60642.5, as applicable.

(g) A pupil identified as limited English proficient pursuant to the administration of a test provided by Section 60810, who is enrolled in any of grades 3 to 11, inclusive, and has not been reclassified as proficient in English pursuant to reclassification procedures required to be developed by Section 313, shall be required to take a test in his or her primary language if a test is available and if fewer than 12 months have elapsed after his or her initial enrollment in any public school in the state.

(h) (1) The Superintendent of Public Instruction shall apportion funds to school districts to enable school districts to meet the

requirements of subdivision (b), the alternative assessment required by subdivision (e), and subdivisions (f) and (g).

(2) The state board shall annually establish the amount of funding to be apportioned to school districts for each test administered and shall annually establish the amount that each publisher shall be paid for each test administered under the agreements required pursuant to Section 60643. The amounts to be paid to the publishers shall be determined by considering the cost estimates submitted by each publisher each September and the amount included in the annual Budget Act, and by making allowance for the estimated costs to school districts for compliance with the requirements of subdivision (b), the alternative assessment required by subdivision (e), and subdivisions (f) and (g).

(3) An adjustment to the amount of funding to be apportioned per test may not be valid without the approval of the Director of Finance. A request for approval of an adjustment to the amount of funding to be apportioned per test shall be submitted in writing to the Director of Finance and the chairpersons of the fiscal committees of both houses of the Legislature with accompanying material justifying the proposed adjustment. The Director of Finance is authorized to approve only those adjustments related to activities required by statute. The Director of Finance shall approve or disapprove the amount within 30 days of receipt of the request and shall notify the chairpersons of the fiscal committees of both houses of the Legislature of the decision.

(i) For the purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the appropriation for the apportionments made pursuant to paragraph (1) of subdivision (h), and the payments made to the publishers under the contracts required pursuant to Section 60643 or subparagraph (C) of paragraph (1) of subdivision (a) of Section 60605 between the department and the contractor, are ''General Fund revenues appropriated for school districts,'' as defined in subdivision (c) of Section 41202, for the applicable fiscal year, and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B,'' as defined in subdivision (e) of Section 41202, for that fiscal year.

(j) As a condition to receiving an apportionment pursuant to subdivision (h), a school district shall report to the superintendent all of the following:

(1) The number of pupils enrolled in the school district in grades 2 to 11, inclusive.

(2) The number of pupils to whom an achievement test was administered in grades 2 to 11, inclusive, in the school district.

(3) The number of pupils in paragraph (1) who were exempted from the test at the request of their parents or guardians.

(k) The superintendent and the state board are authorized and encouraged to assist postsecondary educational institutions to use the California Standards Tests for academic credit, or placement, and admissions processes, or both purposes.

(*l*) The superintendent shall, with the approval of the state board, annually release to the public at least 25 percent of test items from the standards-based achievement test provided for in Section 60642.5 from the test administered in the previous year.

(m) This section shall become operative July 1, 2007.

SEC. 17. Section 60641 of the Education Code is amended to read:

60641. (a) The department shall ensure that school districts comply with each of the following requirements:

(1) The achievement test designated pursuant to Section 60642 and the standards-based achievement test provided for in Section 60642.5 are scheduled to be administered to all pupils during the period prescribed in subdivision (b) of Section 60640.

(2) The individual results of each pupil test administered pursuant to Section 60640 shall be reported, in writing, to the pupil's parent or guardian. The written report shall include a clear explanation of the purpose of the test, the pupil's score, and its intended use by the school district. This subdivision does not require teachers or other school district personnel to prepare individualized explanations of each pupil's test score.

(3) (A) The individual results of each pupil test administered pursuant to Section 60640 shall also be reported to the pupil's school and teachers. The school district shall include the pupil's test results in his or her pupil records. However, except as provided in this section, individual pupil test results may only be released with the permission of either the pupil's parent or guardian if the pupil is a minor, or the pupil if the pupil has reached the age of majority or is emancipated.

(B) Notwithstanding subparagraph (A), a pupil or his or her parent or guardian may authorize the release of individual pupil results to a postsecondary educational institution for the purpose of credit, placement, or admission.

(4) The districtwide, school-level, and grade-level results of the STAR Program in each of the grades designated pursuant to Section 60640, but not the score or relative position of any individually ascertainable pupil, shall be reported to the governing board of the school district at a regularly scheduled meeting, and the countywide, school-level, and grade-level results for classes and programs under the jurisdiction of the county office of education shall be similarly reported to the county board of education at a regularly scheduled meeting.

(b) The publisher designated pursuant to Section 60642 and the publisher of the standards-based achievement tests provided for in

Section 60642.5 shall make the individual pupil, grade, school, school district, and state results available to the department pursuant to paragraph (9) of subdivision (a) of Section 60643 by August 8 of each year in which the achievement test is administered for those schools for which the last day of test administration, including makeup days, is on or before June 25. The department shall make the grade, school, school district, and state results available on the Internet by August 15 of each year in which the achievement test is administered for those schools for which the last day of test administration, including makeup days, is on or before June 25.

(c) The department shall take all reasonable steps to ensure that the results of the test for all pupils who take the test by June 25 are made available on the Internet by August 15, as set forth in subdivision (b).

(d) The department shall ensure that a California Standards Test that is augmented for the purpose of determining credit, placement, or admission of a pupil in a postsecondary educational institution inform a pupil in grade 11 that he or she may request that the results from that assessment be released to a postsecondary educational institution.

SEC. 18. Section 60642 of the Education Code, as added by Chapter 773 of the Statutes of 2003, is amended to read:

60642. (a) The Superintendent of Public Instruction and the State Board of Education may consider any evaluations of independent experts who have not been employed by a test publisher in the preceding 12 months regarding the suitability of the achievement tests submitted by publishers as required by subdivision (b) of Section 60605 for use as part of the STAR Program established by this article.

(b) Based upon a review of the achievement tests submitted and the recommendation made by the superintendent pursuant to subdivision (b) of Section 60605, the state board, in its sole discretion, based on the considerations set forth in Section 60644, shall designate for use as part of the STAR Program a single test in grades 3 and 7.

(c) The state board shall ensure that the achievement test designated pursuant to subdivision (b) contains the subject areas specified in subdivision (c) of Section 60603 for grades 3 and 7.

(d) The state board is hereby authorized to designate the achievement test to be administered pursuant to this article for more than one academic year subject to the availability of funds.

(e) The state board shall minimize, to the extent it deems feasible, the amount of testing time required by the assessment in subdivision (b) for those content areas for which there also exists a standards-based examination as provided for pursuant to Section 60642.5.

(f) 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 the dates on which it becomes inoperative and is repealed.

SEC. 19. Section 60643 of the Education Code is amended to read:

60643. (a) To be eligible for consideration under Section 60642 or 60642.5 by the State Board of Education, test publishers shall agree in writing each year to meet the following requirements, as applicable, if selected:

(1) Enter into an agreement, pursuant to subdivision (e) or (f), with the department by October 15.

(2) With respect to selection under Section 60642.5, align the standards-based achievement test provided for in Section 60642.5 to the academically rigorous content and performance standards adopted by the State Board of Education.

(3) Comply with subdivisions (c) and (d) of Section 60645.

(4) Provide valid and reliable individual pupil scores only in the content areas specified in subdivision (c) of Section 60642 to parents or guardians, teachers, and school administrators.

(5) Provide valid and reliable aggregate scores only in the content areas specified in subdivision (c) of Section 60642 to school districts and county boards of education in all of the following forms and formats:

(A) Grade level.

(B) School level.

(C) District level.

(D) Countywide.

(E) Statewide.

(F) Comparison of statewide scores relative to other states.

(6) Provide disaggregated scores, based on limited-English-proficient status and nonlimited-English-proficient status. For purposes of this section, pupils with ''nonlimited-English-proficient status'' shall include the total of those pupils who are English-only pupils, fluent-English-proficient pupils, and redesignated fluent-English-proficient pupils. These scores shall be provided to school districts and county boards of education in the same forms and formats listed in paragraph (5).

(7) Provide disaggregated scores by pupil gender and ethnicity and provide disaggregated scores based on whether pupils are economically disadvantaged or not. These disaggregated scores shall be in the same forms and formats as listed in paragraph (5). In any one year, the disaggregation shall entail information already being collected by school districts, county offices of education, or charter schools.

(8) Provide disaggregated scores for pupils who have individualized education programs and have enrolled in special education, to the extent required by federal law. These scores shall be provided in the same forms and formats listed in paragraph (5). This section may not be construed

to exclude the scores of special education pupils from any state or federal accountability system.

(9) Provide information listed in paragraphs (5), (6), (7), and (8) to the department and the state board in the medium requested by each entity, respectively.

(b) It is the intent of the Legislature that the publisher work with the Superintendent of Public Instruction and the state board in developing a methodology to disaggregate statewide scores as required in paragraphs (6) and (7) of subdivision (a), and in determining which variable indicated on the STAR testing document shall serve as a proxy for ''economically disadvantaged'' status pursuant to paragraph (7).

(c) Access to any information about individual pupils or their families shall be granted to the publisher only for purposes of correctly associating test results with the pupils who produced those results or for reporting and disaggregating test results as required by this section. School districts are prohibited from excluding a pupil from the test if a parent or parents decline to disclose income. This chapter does not abridge or deny rights to confidentiality contained in the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) or other applicable provisions of state and federal law that protect the confidentiality of information collected by educational institutions.

(d) Notwithstanding any other provision of law, the publisher of the achievement test designated pursuant to Section 60642, the publisher of the standards-based achievement test provided for in Section 60642.5, or any contractor under subdivision (f) shall comply with all of the conditions and requirements enumerated in subdivision (a), as applicable, to the satisfaction of the state board.

(e) (1) A publisher may not provide a test described in Section 60642, 60642.5, or 60650 or in subdivision (f) of Section 60640 for use in California public schools, unless the publisher enters into a written contract with the department as set forth in this subdivision.

(2) The department shall develop, and the state board shall approve, a contract to be entered into with any publisher pursuant to paragraph (1). The department may develop the contract through negotiations with the publisher.

(3) For purposes of the contracts authorized pursuant to this subdivision, the department is exempt from the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code and from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(4) The contracts shall include provisions for progress payments to the publisher for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the amount budgeted for each separate and distinct component task provided for in each contract shall

be withheld pending final completion of all component tasks by that publisher. The total amount withheld pending final completion shall not exceed 10 percent of the total contract price.

(5) The contracts shall require liquidated damages to be paid by the publisher in the amount of up to 10 percent of the total cost of the contract for any component task that the publisher through its own fault or that of its subcontractors fails to substantially perform by the date specified in the agreement.

(6) The contracts shall establish the process and criteria by which the successful completion of each component task shall be recommended by the department and approved by the state board.

(7) The publishers shall submit, as part of the contract negotiation process, a proposed budget and invoice schedule, that includes a detailed listing of the costs for each component task and the expected date of the invoice for each completed component task.

(8) The contracts shall specify the following component tasks, as applicable, that are separate and distinct:

(A) Development of new tests or test items as required by paragraph (2) of subdivision (a).

(B) Test materials production or publication.

(C) Delivery of test materials to school districts.

(D) Test processing, scoring, and analyses.

(E) Reporting of test results to the school districts, including, but not limited to, all reports specified in this section.

(F) Reporting of test results to the department, including, but not limited to, the electronic files required pursuant to this section.

(G) All other analyses or reports required by the superintendent to meet the requirements of state and federal law and set forth in the agreement.

(9) The contracts shall specify the specific reports and data files, if any, that are to be provided to school districts by the publisher and the number of copies of each report or file to be provided.

(10) The contracts shall specify the means by which any delivery date for materials to each school district shall be verified by the publisher and the school district.

(11) School districts may negotiate a separate agreement with the publisher for any additional materials or services not within the contracts specified in this subdivision, including, but not limited to, the administration of the tests to pupils in grade levels other than grades 2 to 11, inclusive. Any separate agreement is not within the scope of the contract specified in this subdivision.

(f) The department, with approval of the state board, may enter into a separate contract for the development or administration of any test authorized pursuant to this part, including, but not limited to, item

development, coordination of tests, assemblage of tests or test items, scoring, or reporting. The liquidated damages provision set forth in paragraph (5) of subdivision (e) shall apply to any contract entered into pursuant to this subdivision.

(g) 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 the dates on which it becomes inoperative and is repealed.

SEC. 20. Section 60643 is added to the Education Code, to read:

60643. (a) To be eligible for consideration under Section 60642 or 60642.5 by the State Board of Education, test publishers shall agree in writing each year to meet the following requirements, as applicable, if selected:

(1) Enter into an agreement, pursuant to subdivision (e) or (f), with the department by October 15.

(2) With respect to selection under Section 60642.5, align the standards-based achievement test provided for in Section 60642.5 to the academically rigorous content and performance standards adopted by the state board.

(3) Comply with subdivisions (c) and (d) of Section 60645.

(4) Provide valid and reliable individual pupil scores only in the content areas specified in subdivision (c) of Section 60642 to parents or guardians, teachers, and school administrators.

(5) Provide valid and reliable aggregate scores only in the content areas specified in subdivision (c) of Section 60642 to school districts and county boards of education in all of the following forms and formats:

(A) Grade level.

(B) School level.

(C) District level.

(D) Countywide.

(E) Statewide.

(F) Comparison of statewide scores relative to other states.

(6) Provide disaggregated scores, based on limited-English-proficient status and nonlimited-English-proficient status. For purposes of this section, pupils with ''nonlimited-English-proficient status'' shall include the total of those pupils who are English-only pupils, fluent-English-proficient pupils, and redesignated fluent-English-proficient pupils. These scores shall be provided to school districts and county boards of education in the same forms and formats listed in paragraph (5).

(7) Provide disaggregated scores by pupil gender and ethnicity and provide disaggregated scores based on whether pupils are economically disadvantaged or not. These disaggregated scores shall be in the same forms and formats as listed in paragraph (5). In any one year, the

disaggregation shall entail information already being collected by school districts, county offices of education, or charter schools.

(8) Provide disaggregated scores for pupils who have individualized education programs and have enrolled in special education, to the extent required by federal law. These scores shall be provided in the same forms and formats listed in paragraph (5). This section may not be construed to exclude the scores of special education pupils from any state or federal accountability system.

(9) Provide information listed in paragraphs (5), (6), (7), and (8) to the state board and the department in the medium requested by each entity, respectively.

(b) It is the intent of the Legislature that the publisher work with the superintendent and the state board in developing a methodology to disaggregate statewide scores as required in paragraphs (6) and (7) of subdivision (a), and in determining which variable indicated on the STAR testing document shall serve as a proxy for ''economically disadvantaged'' status pursuant to paragraph (7).

(c) Access to any information about individual pupils or their families shall be granted to the publisher only for purposes of correctly associating test results with the pupils who produced those results or for reporting and disaggregating test results as required by this section. School districts are prohibited from excluding a pupil from the test if a parent or parents decline to disclose income. This chapter does not abridge or deny rights to confidentiality contained in the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. Sec. 1232g) or other applicable provisions of state and federal law that protect the confidentiality of information collected by educational institutions.

(d) Notwithstanding any other provision of law, the publisher of the achievement test designated pursuant to Section 60642, the publisher of the standards-based achievement test provided for in Section 60642.5, or any contractor under subdivision (f) shall comply with all of the conditions and requirements enumerated in subdivision (a), as applicable, to the satisfaction of the state board.

(e) (1) A publisher may not provide a test described in Section 60642, 60642.5, or 60650 or in subdivision (f) of Section 60640 for use in California public schools unless the publisher enters into a written contract with the department as set forth in this subdivision.

(2) The department shall develop, and the state board shall approve, a contract to be entered into with any publisher pursuant to paragraph (1). The department may develop the contract through negotiations with the publisher.

(3) For purposes of the contracts authorized pursuant to this subdivision, the department is exempt from the requirements of Part 2 (commencing with Section 10100) of Division 2 of the Public Contract

Code and from the requirements of Article 6 (commencing with Section 999) of Chapter 6 of Division 4 of the Military and Veterans Code.

(4) The contracts shall include provisions for progress payments to the publisher for work performed or costs incurred in the performance of the contract. Not less than 10 percent of the amount budgeted for each separate and distinct component task provided for in each contract shall be withheld pending final completion of all component tasks by that publisher. The total amount withheld pending final completion shall not exceed 10 percent of the total contract price.

(5) The contracts shall require liquidated damages to be paid by the publisher in the amount of up to 10 percent of the total cost of the contract for any component task that the publisher through its own fault or that of its subcontractors fails to substantially perform by the date specified in the agreement.

(6) The contracts shall establish the process and criteria by which the successful completion of each component task shall be recommended by the department and approved by the state board.

(7) The publishers shall submit, as part of the contract negotiation process, a proposed budget and invoice schedule, that includes a detailed listing of the costs for each component task and the expected date of the invoice for each completed component task.

(8) The contracts shall specify the following component tasks, as applicable, that are separate and distinct:

(A) Development of new tests or test items as required by paragraph (2) of subdivision (a).

(B) Test materials production or publication.

(C) Delivery of test materials to school districts.

(D) Test processing, scoring, and analyses.

(E) Reporting of test results to the school districts, including, but not limited to, all reports specified in this section.

(F) Reporting of test results to the department, including, but not limited to, the electronic files required pursuant to this section.

(G) All other analyses or reports required by the superintendent to meet the requirements of state and federal law and set forth in the agreement.

(9) The contracts shall specify the specific reports and data files, if any, that are to be provided to school districts by the publisher and the number of copies of each report or file to be provided.

(10) The contracts shall specify the means by which any delivery date for materials to each school district shall be verified by the publisher and the school district.

(11) School districts may negotiate a separate agreement with the publisher for any additional materials or services not within the contracts specified in this subdivision, including, but not limited to, the

administration of the tests to pupils in grade levels other than grades 3 to 11, inclusive. Any separate agreement is not within the scope of the contract specified in this subdivision.

(f) The department, with approval of the state board, may enter into a separate contract for the development or administration of any test authorized pursuant to this part, including, but not limited to, item development, coordination of tests, assemblage of tests or test items, scoring, or reporting. The liquidated damages provision set forth in paragraph (5) of subdivision (e) shall apply to any contract entered into pursuant to this subdivision.

(g) This section shall become operative July 1, 2007.

SEC. 21. Section 60643.1 of the Education Code is amended to read:

60643.1. (a) (1) Commencing in the 1999–2000 school year, and each school year thereafter, the test publisher designated by the State Board of Education pursuant to Section 60642 shall make available a reading list on the Internet by June 1 of that school year. The reading list shall include an index that correlates ranges of pupil reading scores on the English language arts portion of the achievement test designated pursuant to Section 60642 to titles of materials that would be suitable for pupils in each of grades 2 to 11, inclusive, to read in order to improve their reading skills. This reading list shall include titles of books that allow a pupil to practice reading at his or her current reading level and that will assist the pupil in achieving a higher level of proficiency. To the extent possible, the index shall also include information related to the subject matter of each title. At a minimum, the reading list shall also categorize titles by subject matter and identify age-appropriate distinctions in the list.

(2) Commencing in the 1999–2000 school year, and each school year thereafter, the test publisher shall make available, for purchase by school districts, a report that provides a numerical distribution of the reading scores of all pupils in California who took the achievement test designated pursuant to Section 60642.

(3) Commencing in the 1999–2000 school year, and each school year thereafter, the test publisher shall make available, for purchase by school districts, reading lists that can be distributed to pupils based on a pupil's age and the ranges of scores on the English language arts portion of the achievement test designated pursuant to Section 60642.

(4) The requirements of this subdivision shall only become operative upon a determination by the Director of Finance that funds are available to make an adjustment pursuant to subdivision (h) of Section 60640.

(b) The state board and the Superintendent of Public Instruction shall jointly certify that the process used by the publisher to determine the

reading levels of the corresponding reading list pursuant to paragraph (1) of subdivision (a) meets the following criteria:

(1) The process is educationally valid.

(2) The process results in a reading list for each reading span that provides titles at the pupil's current reading level and the next higher level for challenging practice.

(3) The process results in a selection from the universe of titles from the list developed pursuant to subdivision (d) that matches each reading level.

(4) The process is unbiased in the selection of publishers' titles from the legal compliance list.

(c) The titles listed at each reading level range posted on the Internet and the reading lists made available to school districts pursuant to subdivision (a) shall, at a minimum, include all relevant literature materials approved as of September 1, 1999, as being legally compliant pursuant to Article 3 (commencing with Section 60040) of Chapter 1, and the titles listed in all of the content area reading and literature lists that are developed and published by the department and that have been determined by the department to meet the relevant reading level as certified pursuant to subdivision (b).

(d) By imposing the requirements of this section on publishers, it is not the intent of the Legislature to unfairly disadvantage any publisher who has otherwise met the requirements of this section or of Article 3 (commencing with Section 60040) of Chapter 1 of Part 33.

(e) 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 the dates on which it becomes inoperative and is repealed.

SEC. 22. Section 60643.1 is added to the Education Code, to read:

60643.1. (a) (1) Commencing in the 1999–2000 school year, and each school year thereafter, the test publisher designated by the State Board of Education pursuant to Section 60642 shall make available a reading list on the Internet by June 1 of that school year. The reading list shall include an index that correlates ranges of pupil reading scores on the English language arts portion of the achievement test designated pursuant to Section 60642 to titles of materials that would be suitable for pupils in each of grades 3 to 11, inclusive, to read in order to improve their reading skills. This reading list shall include titles of books that allow a pupil to practice reading at his or her current reading level and that will assist the pupil in achieving a higher level of proficiency. To the extent possible, the index shall also include information related to the subject matter of each title. At a minimum, the reading list shall also categorize titles by subject matter and identify age-appropriate distinctions in the list.

(2) Commencing in the 1999–2000 school year, and each school year thereafter, the test publisher shall make available, for purchase by school districts, a report that provides a numerical distribution of the reading scores of all pupils in California who took the achievement test designated pursuant to Section 60642.

(3) Commencing in the 1999–2000 school year, and each school year thereafter, the test publisher shall make available, for purchase by school districts, reading lists that can be distributed to pupils based on a pupil's age and the ranges of scores on the English language arts portion of the achievement test designated pursuant to Section 60642.

(4) The requirements of this subdivision shall only become operative upon a determination by the Director of Finance that funds are available to make an adjustment pursuant to subdivision (h) of Section 60640.

(b) The state board and the Superintendent of Public Instruction shall jointly certify that the process used by the publisher to determine the reading levels of the corresponding reading list pursuant to paragraph (1) of subdivision (a) meets the following criteria:

(1) The process is educationally valid.

(2) The process results in a reading list for each reading span that provides titles at the pupil's current reading level and the next higher level for challenging practice.

(3) The process results in a selection from the universe of titles from the list developed pursuant to subdivision (d) that matches each reading level.

(4) The process is unbiased in the selection of publishers' titles from the legal compliance list.

(c) The titles listed at each reading level range posted on the Internet and the reading lists made available to school districts pursuant to subdivision (a) shall, at a minimum, include all relevant literature materials approved as of September 1, 1999, as being legally compliant pursuant to Article 3 (commencing with Section 60040) of Chapter 1, and the titles listed in all of the content area reading and literature lists that are developed and published by the department and that have been determined by the department to meet the relevant reading level as certified pursuant to subdivision (b).

(d) By imposing the requirements of this section on publishers, it is not the intent of the Legislature to unfairly disadvantage any publisher who has otherwise met the requirements of this section or of Article 3 (commencing with Section 60040) of Chapter 1 of Part 33.

(e) This section shall become operative July 1, 2007.

SEC. 23. Section 60644 of the Education Code is amended to read:

60644. In designating an achievement test pursuant to Section 60642, the state board shall adopt only a nationally normed test that

meets nationally recognized criteria for validity and reliability and shall consider each of the following criteria:

(a) Ability of the publisher to produce valid, reliable individual pupil scores.

(b) Quality and age of empirical data supporting national norm referenced data analysis of the proposed assessment.

(c) Ability to report results pursuant to the provisions of paragraphs (4) to (7), inclusive, of subdivision (a) of Section 60643 by August 8.

(d) Ability to report results that permit comparability between data from school districts' previous administration of standardized achievement tests, if feasible.

(e) Per-pupil cost estimates of administering the proposed assessment.

(f) The publisher's procedure for ensuring the security and integrity of test questions and materials.

(g) Experience in the successful conduct of testing programs adopted and administered by other states. For experience to be considered, the number of grades and pupils tested shall be provided.

SEC. 24. 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 234

An act to amend Sections 12693.32, 12693.325, and 12693.326 of the Insurance Code, relating to health care coverage, and making an appropriation therefor.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 12693.32 of the Insurance Code is amended to read:

12693.32. (a) The board may pay designated individuals or organizations an application assistance fee, if the individual or

organization assists an applicant to complete the program application, and the applicant is enrolled in the program as a result of the application.

(b) The board may establish the list of eligible individuals, or categories of individuals and organizations, the amount of the application assistance payment, and rules necessary to assure the integrity of the payment process.

(c) The board, as part of its community outreach and education campaign, may include community-based face-to-face initiatives to educate potentially eligible applicants about the program and to assist potential applicants in the application process. Those entities undertaking outreach efforts shall not include as part of their responsibilities the selection of a health plan and provider for the applicant. Participating plans shall be prohibited from directly, indirectly, or through their agents conducting in-person, door-to-door, mail, or telephone solicitation of applicants for enrollment except through employers with employees eligible to participate in the purchasing credit mechanism. However, information approved by the board on the providers and plans available to prospective subscribers in their geographic areas shall be distributed through any door-to-door activities for potentially eligible applicants and their children.

(d) (1) All assistance offered to an individual applying to the program shall be free of charge. Except as provided in subdivision (a) or by a regulation adopted by the board, no individual or organization offering or providing assistance to an applicant to complete the program application shall solicit or receive any fee or remuneration from the applicant or subscriber for offering or providing that service.

(2) A person who violates this subdivision or a regulation adopted by the board pursuant to this subdivision, shall be assessed a civil penalty of five hundred dollars ($500) for each violation. For this purpose, a violation occurs each day a solicitation is published on an Internet Web site or is otherwise circulated to the public. This penalty is in addition to any other remedy or penalty provided by law. All penalties collected under this paragraph shall be deposited in the State Treasury to the credit of the Healthy Families Fund.

(3) A civil or administrative action brought under this article at the request of the board may be brought by the Attorney General in the name of the people of the State of California in a court of competent jurisdiction, or in a hearing through the Office of Administrative Hearings conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, except that when a civil action is to be filed in small claims court, the board may bring the action. The action shall be filed within three years of the date the board discovered the facts indicating a violation of this subdivision.

SEC. 2. Section 12693.325 of the Insurance Code is amended to read:

12693.325. (a) (1) Notwithstanding any provision of this chapter, a participating health, dental, or vision plan that is licensed and in good standing as required by subdivision (b) of Section 12693.36 may provide application assistance directly to an applicant acting on behalf of an eligible person who telephones, writes, or contacts the plan in person at the plan's place of business, or at a community public awareness event that is open to all participating plans in the county, or at any other site approved by the board, and who requests application assistance.

(2) Until January 1, 2006, a participating health, dental, or vision plan may also provide application assistance directly to an applicant only under the following conditions:

(A) The assistance is provided upon referral from a government agency, school, or school district.

(B) The applicant has authorized the government agency, school, or school district to allow a health, dental, or vision plan to contact the applicant with additional information on enrolling in free or low-cost health care.

(C) The State Department of Health Services approves the applicant authorization form in consultation with the board.

(D) The plan may not actively solicit referrals and may not provide compensation for the referrals.

(E) If a family is already enrolled in a health plan, the plan that contacts the family cannot encourage the family to change health plans.

(F) The board amends its marketing guidelines to require that when a government agency, school, or school district requests assistance from a participating health, dental, or vision plan to provide application assistance, that all plans in the area shall be invited to participate.

(G) The plan abides by the board's marketing guidelines.

(b) A participating health, dental, or vision plan may provide application assistance to an applicant who is acting on behalf of an eligible or potentially eligible child in any of the following situations:

(1) The child is enrolled in a Medi-Cal managed care plan and the participating plan becomes aware that the child's eligibility status has or will change and that the child will no longer be eligible for Medi-Cal. In those instances, the plan shall inform the applicant of the differences in benefits and requirements between the Healthy Families Program and the Medi-Cal program.

(2) The child is enrolled in a Healthy Families Program managed care plan and the participating plan becomes aware that the child's eligibility status has changed or will change and that the child will no longer be eligible for the Healthy Families Program. When it appears a child may be eligible for Medi-Cal benefits, the plan shall inform the applicant of

the differences in benefits and requirements between the Medi-Cal program and the Healthy Families Program.

(3) The participating plan provides employer-sponsored coverage through an employer and an employee of that employer who is the parent or legal guardian of the eligible or potentially eligible child.

(4) The child and his or her family are participating through the participating plan in COBRA continuation coverage or other group continuation coverage required by either state or federal law and the group continuation coverage will expire within 60 days, or has expired within the past 60 days.

(5) The child's family, but not the child, is participating through the participating plan in COBRA continuation coverage or other group continuation coverage required by either state or federal law, and the group continuation coverage will expire within 60 days, or has expired within the past 60 days.

(c) A participating health, dental, or vision plan employee or other representative that provides application assistance shall complete a certified application assistant training class approved by the State Department of Health Services in consultation with the board. The employee or other representative shall in all cases inform an applicant verbally of his or her relationship with the participating health plan. In the case of an in-person contact, the employee or other representative shall provide in writing to the applicant the nature of his or her relationship with the participating health plan and obtain written acknowledgment from the applicant that the information was provided.

(d) A participating health, dental, or vision plan that provides application assistance may not do any of the following:

(1) Directly, indirectly, or through its agents, conduct door-to-door marketing or telephone solicitation.

(2) Directly, indirectly, or through its agents, select a health plan or provider for a potential applicant. Instead, the plan shall inform a potential applicant of the choice of plans available within the applicant's county of residence and specifically name those plans and provide the most recent version of the program handbook.

(3) Directly, indirectly, or through its agents, conduct mail or in-person solicitation of applicants for enrollment, except as specified in subdivision (b), using materials approved by the board.

(e) A participating health, dental, or vision plan that provides application assistance pursuant to this section is not eligible for an application assistance fee otherwise available pursuant to Section 12693.32, and may not sponsor a person eligible for the program by paying his or her family contribution amounts or copayments, and may not offer applicants any inducements to enroll, including, but not limited to, gifts or monetary payments.

(f) A participating health, dental, or vision plan may assist applicants acting on behalf of subscribers who are enrolled with the participating plan in completing the program's annual eligibility review package in order to allow those applicants to retain health care coverage.

(g) Each participating health, dental, or vision plan shall submit to the board a plan for application assistance. All scripts and materials to be used during application assistance sessions shall be approved by the board and the State Department of Health Services.

(h) Each participating health, dental, or vision plan shall provide each applicant with the toll-free telephone number for the Healthy Families Program.

(i) When deemed appropriate by the board, the board may refer a participating health, dental, or vision plan to the Department of Managed Health Care or the State Department of Health Services, as applicable, for the review or investigation of its application assistance practices.

(j) The board shall evaluate the impact of the changes required by this section and shall provide a biennial report to the Legislature on or before March 1 of every other year. To prepare these reports, the State Department of Health Services, in cooperation with the board, shall code all the application packets used by a managed care plan to record the number of applications received that originated from managed care plans. The number of applications received that originated from managed care plans shall also be reported on the board's Web site. In addition, the board shall periodically survey those families assisted by plans to determine if the plans are meeting the requirements of this section, and if families are being given ample information about the choice of health, dental, or vision plans available to them.

(k) Nothing in this section shall be seen as mitigating a participating health, dental, or vision plan's responsibility to comply with all federal and state laws, including, but not limited to, Section 1320a-7b of Title 42 of the United States Code.

(*l*) Paragraph (2) of subdivision (a) shall become inoperative on January 1, 2006.

SEC. 3. Section 12693.326 of the Insurance Code is amended to read:

12693.326. Notwithstanding any other provision of this part, a new subscriber in the program shall be allowed to switch his or her choice of plans once within the first three months of coverage for any reason.

CHAPTER 235

An act to amend Sections 19596.1 and 19596.2 of, and to add Section 19596.3 to, the Business and Professions Code, relating to horse racing, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 19596.1 of the Business and Professions Code is amended to read:

19596.1. (a) Notwithstanding any other provision of law, the board may authorize a harness or quarter horse association conducting a race meeting to accept wagers on the results of out-of-state or out-of-country harness or quarter horse races and, with the board's approval and with the concurrence of the horsemen's organization contracting with the association, other designated harness or quarter horse races during the period it is conducting the racing meeting, if all of the following conditions are met:

(1) The authorization complies with federal laws, including, but not limited to, Chapter 57 (commencing with Section 3001) of Title 15 of the United States Code.

(2) Wagering is offered only within the racing inclosure and only within 36 hours of the running of the out-of-state feature race.

(3) The association conducts at least seven live races, and imports not more than six races on those days during a racing meeting when live races are being run, except as provided in subdivision (b).

(4) If only one breed of horse specified in this section is being raced on a given day, then the association conducting the live racing may import those races which would otherwise be simulcast by the association which is not racing, provided that the total number of harness or quarter horse races imported in a calendar year does not exceed the number of night races imported in 1998 after 5:30 p.m. After the usual deductions, including the portion for the racing association, the portion remaining for purses from these races shall be distributed equally for purses for harness horsemen and quarter horse horsemen.

(5) No quarter horse or harness racing association shall accept wagers on out-of-state or out-of-country quarter horse or harness races commencing before 5:30 p.m., Pacific standard time, without the consent of any thoroughbred association or fair that is then conducting a live racing meeting in this state.

(b) An association that is authorized to import races pursuant to subdivision (a) may, at its sole discretion, import fewer than the maximum number of harness or quarter horse races authorized in paragraph (3) of subdivision (a). For up to two races per night, for each race that is not imported under the maximum authorized by paragraph (3) of subdivision (a) on a particular night of racing, the association may add a race to the number of races allowable under the maximum authorization on another night of racing. However, no more than two races may be added under this subdivision to the number allowable on a single night, and the total number of imported races over a calendar year may not exceed the total number of imported races authorized pursuant to paragraphs (3) and (4) of subdivision (a).

SEC. 2. Section 19596.2 of the Business and Professions Code is amended to read:

19596.2. (a) Notwithstanding any other provision of law and except as provided in Section 19596.4, a thoroughbred racing association or fair may distribute the audiovisual signal and accept wagers on the results of out-of-state thoroughbred races conducted in the United States during the calendar period the association or fair is conducting a race meeting, including days on which there is no live racing being conducted by the association or fair, without the consent of the organization that represents horsemen participating in the race meeting and without regard to the amount of purses, provided that the total number of thoroughbred races on which wagers are accepted statewide in any given year does not exceed the total number of thoroughbred races on which wagers were accepted in 1998. Further, the total number of thoroughbred races imported by associations or fairs on a statewide basis under this section shall not exceed 23 per day on days when live thoroughbred or fair racing is being conducted in the state. The limitation of 23 imported races per day does not apply to any of the following:

(1) Races imported for wagering purposes pursuant to subdivision (c).

(2) Races imported that are part of the race card of the Kentucky Derby, the Kentucky Oaks, the Preakness Stakes, the Belmont Stakes, the Jockey Club Gold Cup, the Breeders' Cup, or the Haskell Invitational.

(3) Races imported into the northern zone when there is no live thoroughbred or fair racing being conducted in the northern zone.

(4) Races imported into the combined central and southern zones when there is no live thoroughbred or fair racing being conducted in the combined central and southern zones.

(b) Any thoroughbred association or fair accepting wagers pursuant to subdivision (a) shall conduct the wagering in accordance with the applicable provisions of Sections 19601, 19616, 19616.1, and 19616.2.

(c) No thoroughbred association or fair may accept wagers pursuant to this section on out-of-state races commencing after 7 p.m., Pacific standard time, without the consent of the harness or quarter horse racing association that is then conducting a live racing meeting in Orange or Sacramento Counties.

SEC. 3. Section 19596.3 is added to the Business and Professions Code, to read:

19596.3. Notwithstanding any other provision of law, a thoroughbred racing association or fair may distribute the audiovisual signal and accept wagers on the results of out-of-country thoroughbred races during the calendar period the association or fair is conducting a race meeting, without the consent of the organization that represents horsemen participating in the race meeting. Out-of-country races shall be imported under the following conditions:

(a) A thoroughbred association or fair shall conduct the wagering in accordance with the applicable provisions of Sections 19601, 19616, 19616.1, and 19616.2.

(b) The total number of out-of-country thoroughbred races on which wagers are allowed to be accepted statewide in any given year shall not exceed the total number of out-of-country thoroughbred races on which wagers were accepted in 1998.

(c) No thoroughbred association or fair may accept wagers pursuant to this section on out-of-country races commencing after 5:30 p.m., Pacific standard time, without the consent of the harness or quarter horse racing association that is then conducting a live racing meeting.

(d) A thoroughbred racing association or fair distributing the audiovisual signal and accepting wagers on the results of out-of-country races pursuant to this section may execute an agreement with an association that conducts thoroughbred races in the southern zone to allow that association to distribute the signal and accept wagers on the results of out-of-country thoroughbred races, except that the license fees paid to the state shall be double the amount paid by a quarter horse racing association specified in subdivision (b) of Section 19605.7.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

To protect the California horse racing industry from losing customers to out-of-state and out-of-country wagering hubs, it is necessary that this bill take immediate effect.

CHAPTER 236

An act to amend Sections 18070, 18070.2, 18070.3, and 18070.5 of, and to add Sections 18070.6 and 18070.7 to, the Health and Safety Code, relating to manufactured housing, and making an appropriation therefor.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 18070 of the Health and Safety Code is amended to read:

18070. (a) The Legislature finds and declares all of the following:

(1) The financial hardship endured by someone who is buying or selling a manufactured home for the purpose of using it for a primary residence is more profound than the hardship of someone who is selling or purchasing a manufactured home for investment purposes.

(2) It is, therefore, the intent of the Legislature in enacting this chapter that any claims for primary residences submitted, pursuant to this chapter, by a claimant for payment from the fund shall be given priority over claims submitted for investment purposes.

(3) The distinctions made in this chapter between claims made for personal residential purposes and claims made for investment purposes shall reflect the priorities set forth in this paragraph.

(4) The costs of seeking and obtaining civil judgments and related collection efforts to support claims for compensation often exceed the ability of claimants and the amounts received.

(5) The costs and efforts of public entities obtaining criminal or administrative restitution orders could provide further benefits if these orders could be used as the basis for compensation claims.

(b) The following definitions shall apply for the purposes of this chapter:

(1) ''Actual and direct loss'' includes the following:

(A) The amount of the actual and direct loss, interest at the statutory rate from the date of loss, plus court costs and reasonable attorney fees incurred in pursuit of the judgment, not to exceed 25 percent of the amount of the judgment, if the claim is based on a judgment obtained by a private attorney or an attorney employed by a nonprofit corporation,

and not to exceed 35 percent of the amount of the judgment if the claim is based on a judgment obtained by an attorney employed by a public agency.

(B) The amount of the actual and direct loss, if the claim is not based on a judgment. However, the claimant may collect actual and reasonable costs incurred in pursuit of compensation including attorneys fees not exceeding 15 percent of the amount of the claim and court costs, if any.

''Actual and direct loss'' does not include any punitive damages or damages awarded for negligent or intentional infliction of emotional distress.

(2) ''Claimant'' does not include a person holding a lien on, or a person possessing a secondary interest in, a manufactured home.

(3) ''Conversion'' means the unlawful appropriation of the property of another.

(4) ''Judgment'' means any of the following:

(A) A final judgment in a court of competent jurisdiction, other than a court in another state, including, but not limited to, a criminal restitution order issued pursuant to subdivision (f) of Section 1202.4 of the Penal Code or Section 3663 of Title 18 of the United States Code.

(B) An order of the director, including an order for restitution, based on an accusation filed pursuant to Article 3 (commencing with Section 18058) of Chapter 7, after an opportunity for a hearing.

(5) ''Complaint'' means the facts of the underlying transaction upon which the criminal restitution order or administrative order is based.

(6) ''Judgment debtor'' means any defendant who is the subject of the criminal restitution order or civil judgment, any respondent who is the subject of an administrative accusation and order, or any person responsible for any violation upon which payment is made, as determined by the department.

(c) There is hereby created in the State Treasury the Manufactured Home Recovery Fund. The money in the fund shall be used only for the purposes of this chapter, including payment of the department's administrative costs incurred pursuant to this chapter. The department's costs may include any investigative costs incurred under this chapter, costs incurred to render a decision pursuant to Section 18070.3, and costs incurred in defending a decision on appeal.

(d) The money in the fund may be invested pursuant to Chapter 3 (commencing with Section 16430) of Part 2 of Division 4 of Title 2 of the Government Code. All income derived from investments of the fund shall be returned to the fund by the Treasurer as the income is earned.

(e) Notwithstanding Section 13340 of the Government Code, the money in the fund is hereby continuously appropriated to make the payments and distributions required by this chapter.

SEC. 2. Section 18070.2 of the Health and Safety Code is amended to read:

18070.2. (a) Fees for the establishment and operation of the Manufactured Home Recovery Fund shall be collected on or after January 1, 1985. Claims against the fund arising from sales which occur after January 1, 1985, may not be submitted to the department before January 1, 1986. For purposes of this section, the date of sale shall be either of the following:

(1) The date escrow closes for sales by dealers that are subject to Section 18035 or 18035.2.

(2) For all other sales, including sales by dealers in which escrow does not close, the date when the purchaser has paid the purchase price or, in lieu thereof, has signed a security agreement, option to purchase, or purchase contract and has taken physical possession or delivery of the manufactured home.

(b) Notwithstanding any other provision of law, whenever the balance in the Manufactured Home Recovery Fund exceeds one million dollars ($1,000,000) on January 1 of any year, the department may reduce the fee provided for in subdivision (c) of Section 18070.1. The department may again increase the fee up to a maximum of ten dollars ($10) whenever the balance in the fund falls below one million dollars ($1,000,000).

SEC. 3. Section 18070.3 of the Health and Safety Code is amended to read:

18070.3. (a) When any person (1) who has purchased a manufactured home for a personal or family residential or investment purpose or (2) who has sold a manufactured home for a personal or family residential or investment purpose, obtains a final judgment against any manufactured home manufacturer, manufactured home dealer or salesperson, or other seller or purchaser, and the judgment is based on the grounds of (1) failure to honor warranties or guarantees, (2) fraud or willful misrepresentation related to any financial provision, (3) fraud or willful misrepresentation of the kind or quality of the product sold or purchased, (4) conversion, (5) any willful violation of any other provision of this part, including the provisions regulating escrow accounts, or regulations adopted pursuant to this part, or (6) violation of Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code, resulting in an actual and direct loss directly arising out of any transaction that occurs on or after January 1, 1985, the person, upon termination of all proceedings, including appeals, may file a claim with the department for an order directing payment out of the fund for the amount of actual and direct loss in the transaction.

(b) If any person either purchases a manufactured home used for a personal or family residential or investment purpose from, or sells a manufactured home used for a personal or family residential or investment purpose to, a person or entity who is or has been the subject of a bankruptcy proceeding, the person may file a claim with the department for an order directing payment out of the fund for the actual and direct loss in the transaction based on (1) the failure to honor warranties or guarantees, (2) fraud or willful misrepresentation related to any financial provision, (3) fraud or willful misrepresentation of the kind or quality of product purchased or sold, (4) conversion, (5) willful violation of any other provision in this part, including the provisions regulating escrow accounts, or (6) violation of Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code, resulting in an actual and direct loss directly arising out of any transaction that occurs on or after January 1, 1985.

(c) (1) The total amount of the claim shall not exceed the amount of actual and direct loss that remains unreimbursed from any source.

(2) The maximum payment ordered under this section, with respect to any one sales transaction on a new or used manufactured home, shall be the amount of the actual and direct loss, as determined by the department based on information in the possession of the department and information provided by the claimant or claimants. In no event shall the actual payment relating to a single transaction exceed seventy-five thousand dollars ($75,000).

(3) Notwithstanding any other provision of this chapter, a person who purchases or sells a manufactured home for an investment purpose may receive payment from the fund for that purpose only once. A person who has received payment from the fund for the purchase or sale of a manufactured home for an investment purpose shall henceforth be ineligible to make a claim under this chapter, either as a natural person or as a member of a partnership, as an officer or director of a corporation, as a member of a marital community, or in any other capacity.

(d) Prior to payment of any claim against the fund, the claimant or claimants shall have first:

(1) If the claim is based on a final judgment, diligently pursued collection efforts against all the assets of the judgment debtor, or presented evidence satisfactory to the department that the debtor is judgment proof, or demonstrated evidence satisfactory to the department that the costs of collection are likely to be in excess of the amounts that could be collected. This evidence may include, but is not limited to, a description of the searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets liable to be sold or applied to the satisfaction of the judgment, an itemized valuation of the

assets discovered, and the results of actions by the claimant to have assets applied to satisfy the judgment.

(2) If the claim is not based on a final judgment, presented evidence satisfactory to the department of either of the following:

(A) That the licensee is or has been the subject of bankruptcy proceedings and, for purposes of any civil litigation or claims in bankruptcy proceedings, has assigned to the department any interest in the actual and direct loss described in subdivision (d) in the amount that the claimant or claimants recover from the fund.

(B) That the claimant's claim is consistent with this chapter and the claimant had presented evidence satisfactory to the department that the debtor is judgment proof, or demonstrated evidence satisfactory to the department that the costs of collection are likely to be in excess of the amounts that could be collected. This evidence may include, but not be limited to, a description of searches and inquiries conducted by or on behalf of the claimant with respect to the judgment debtor's assets eligible to be sold or applied to the satisfaction of the judgment, an itemized valuation of the assets discovered, and the results of actions by the claimant to have the assets applied to satisfaction of the judgment.

(3) If the claim is based upon a violation of a provision within a warranty provided pursuant to Chapter 3 (commencing with Section 1797) of Title 1.7 of Part 4 of Division 3 of the Civil Code, demonstrated evidence satisfactory to the department that the claimant has been denied full compensation or correction under the warranty after the claimant has attempted to exercise his or her rights pursuant to the warranty.

(e) A claim against the fund shall be filed with the department within the following time periods:

(1) If the claim is based on a final judgment, within two years from the date of the judgment.

(2) If the claim is not based on a final judgment, within two years from the termination of bankruptcy proceedings or two years from the date of sale as determined by subdivision (a) of Section 18070.2, or within two years of discovery of the violations causing actual and direct losses pursuant to this article but no longer than five years after the date of sale as determined by subdivision (a) of Section 18070.2, whichever event occurs later.

(f) When any person files a claim for an order directing payment from the fund, the claimant shall mail, by first-class mail, a copy of that claim to the last known address of the judgment debtor. The department shall conduct a review of the application and other pertinent information in its possession, and it may issue an order directing payment out of the fund as provided in subdivisions (a) to (e), inclusive, subject to the limitations of subdivisions (a) to (e), inclusive, if the claimant or claimants show all of the following:

(1) That he or she is not a spouse of the judgment debtor, the bankrupt licensee, or a person representing the spouse.

(2) That he or she is making an application within the time specified in subdivision (e).

(3) That the claimant has satisfied the applicable requirements of subdivision (d).

(4) That, if the claimant is a seller of a manufactured home used by the seller for personal, family, or household purposes, the claimant made a good faith effort to adequately secure the debt resulting from the sale of the manufactured home and with respect to which the claim is made. For purposes of this paragraph, a good faith effort to secure the debt may be demonstrated by, but shall not be limited to, providing the department with a promissory note signed by the debtor and which, pursuant to the terms thereof, is secured by collateral with a reasonable value at least equal to the debt evidenced by the promissory note.

(g) Upon an order of the department directing that payment be made out of the fund, the Controller is authorized to draw a warrant for the payment of the amount of the claim approved by the department pursuant to this section.

(h) In dispersing moneys from the fund, the department is authorized to give priority to claimants who have attempted to purchase or sell a manufactured home for a personal or family residential purpose.

(i) All claims to the fund that are received on or after January 1, 1993, shall be processed, and a determination made, within one year of submission of a properly completed application.

(j) The department, upon request by a Member of the Legislature, shall provide the following information: the number of claims to the fund, number of claims processed and decided within one year of their application date and submission of a properly completed application, the amount of fund money paid to claimants, and the amount of fund money allocated for the department's costs.

SEC. 4. Section 18070.5 of the Health and Safety Code is amended to read:

18070.5. When the department has caused payment to be made from the fund to any person, the department shall be subrogated to the rights of that person.

SEC. 5. Section 18070.6 is added to the Health and Safety Code, to read:

18070.6. (a) To the extent that department personnel and resources are available, in any administrative action brought by the department pursuant to Article 3 (commencing with Section 18058) of Chapter 7, the department shall make reasonable efforts to plead and prove facts and allegations and request findings and conclusions necessary to support an order of restitution that may be deemed a final judgment.

(b) A person for whose benefit an order of restitution or other financial award has been granted by the director pursuant to this section may waive his or her rights to any additional compensation from the fund arising out of a transaction and submit a claim based on that administrative order to the fund after demonstrating efforts to collect pursuant to subdivision (d) of Section 18070.3.

(c) An order for restitution by the director by the director pursuant to this section shall not exceed the amount of restitution ordered or approved by an administrative law judge in an administrative action brought by the department.

SEC. 6. Section 18070.7 is added to the Health and Safety Code, to read:

18070.7. The amendments to this chapter by the act adding additional grounds or procedures for recovery from the fund shall apply to any transaction for which the statute of limitation established by subdivision (e) of Section 18070.3 has not expired on January 1, 2004.

CHAPTER 237

An act to amend Sections 15819.60 and 15819.65 of the Government Code, to amend Section 1104.1 of, and to repeal and amend Section 1104.2 of, the Military and Veterans Code, relating to veterans, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 15819.60 of the Government Code is amended to read:

15819.60. (a) The Department of General Services, on behalf of the Department of Veterans Affairs, may design, equip, construct, and establish additional veterans' homes to be located in Fresno County and Shasta County.

(b) The Department of General Services, on behalf of the Department of Veterans Affairs, may design, equip, construct, and renovate the veterans' homes at Yountville, Barstow, and Chula Vista, as needed and justified.

(c) The Department of General Services, on behalf of the Department of Veterans Affairs, may design, equip, construct, and expand the homes

proposed to be built at Lancaster, Saticoy, and West Los Angeles, as needed and justified.

(d) The construction of veterans' homes in Fresno County and Shasta County may not commence until the veterans' homes in Lancaster, Saticoy, and West Los Angeles have been fully funded.

(e) The veterans' homes to be constructed in Fresno County and Shasta County may be built concurrently.

SEC. 2. Section 15819.65 of the Government Code is amended to read:

15819.65. (a) (1) The State Public Works Board may issue lease-revenue bonds, notes, or bond anticipation notes pursuant to Chapter 5 (commencing with Section 15830) of Part 10b of Division 3 of Title 2 to finance the design, construction, equipping, renovation, or expansion of the veterans' homes specified in Section 15819.60.

(2) The issuance of bonds or notes under this section is contingent upon a commitment from the federal government to pay for the federal matching share of the cost of the design, construction, equipping, renovation, or expansion of the veterans' homes specified in Section 15819.60.

(b) The amount of lease-revenue bonds, notes, or bond anticipation notes to be sold pursuant to Chapter 5 (commencing with Section 15830) for capital outlay for this purpose shall not exceed the sum of sixty-two million dollars ($62,000,000). This amount shall be available, in addition to any federal funds available, as necessary for the design, construction, renovation, or expansion of the veterans' homes, site studies, suitability reports, environmental studies, master planning, architectural programming, schematics, preliminary plans, working drawings, construction, and equipment.

(c) The amount of revenue bonds, negotiable notes, or negotiable bond anticipation notes to be sold shall equal the costs of performance of all functions referred to in subdivision (b), and any additional amounts, as specified in subdivision (g).

(d) The amount of negotiable bond anticipation notes to be sold shall not exceed the amount of revenue bonds or negotiable notes authorized by this chapter.

(e) Notwithstanding Section 13340, funds derived for the purposes of this chapter from the financing methods pursuant to Chapter 5 (commencing with Section 15830) for the design, construction, equipping, renovation, or expansion of the veterans' homes are hereby continuously appropriated to the board on behalf of the Department of Veterans Affairs for the design, construction, equipping, renovation, expansion, or refinancing of the veterans' homes so financed.

In addition to the funds appropriated pursuant to this section, the federal matching funds available pursuant to the State Veterans' Home

Assistance Improvement Act of 1977 (38 U.S.C. Sec. 8131 et seq.), are hereby continuously appropriated to the board on behalf of the Department of Veterans Affairs for the purposes of design, construction, equipping, renovation, expansion, or repayment of any loan related to the projects specified in Section 15819.60.

(f) In anticipation of federal matching share funding available pursuant to the State Veterans' Home Assistance Improvement Act of 1977 (38 U.S.C. Sec. 8131 et seq.), the State Public Works Board and the Department of Veterans Affairs may obtain interim financing for the project costs authorized in Section 15819.60 from any appropriate source, including, but not limited to, the Pooled Money Investment Account pursuant to Sections 16312 and 16313.

(g) The board may authorize the augmentation of the acquisition, design, and cost of the construction, renovation, or expansion of the homes set forth in this chapter pursuant to the board's authority under Section 13332.11. In addition, the board may authorize any additional amounts necessary to establish a reasonable construction and equipping reserve and to pay the cost of financing, including, but not limited to, the payment of interest during the design and construction of the projects, the costs of financing a debt service fund, and the cost of issuance of permanent financing for the projects. This additional amount may include interest payable on any interim financing obtained.

(h) The Department of Veterans Affairs is authorized and directed to execute and deliver any and all leases, contracts, agreements, or other documents necessary or advisable to consummate the sale of bonds or otherwise effectuate the financing of the scheduled projects.

(i) In the event that the bonds authorized for projects in Section 15819.60 are not sold, the Department of Veterans' Affairs shall commit a sufficient portion of its support appropriation, as determined by the Department of Finance, to repay any interim financing. It is the intent of the Legislature that this commitment be made until all interim financing is repaid either through the proceeds from the sale of bonds or from an appropriation.

(j) The State Public Works Board shall not itself be deemed a lead or responsible agency for purposes of the California Environmental Quality Act (commencing with Section 21000 of the Public Resources Code) for any activities under the State Building Construction Act of 1955 (commencing with Section 15800 of the Government Code). This subdivision does not exempt any participating agency or department from the requirements of the California Environmental Quality Act, and is intended to be declarative of existing law.

SEC. 3. Section 1104.1 of the Military and Veterans Code is amended to read:

1104.1. (a) Notwithstanding Section 13340 of the Government Code, the moneys in the Veterans' Home Fund established by Section 1103 are, subject to the limit set forth in subdivision (b), hereby continuously appropriated, without regard to fiscal years, to the Department of Veterans Affairs, subject to the approval of the Department of Finance, for the funding of the state's matching requirement for the design, equipping, and construction of all of the following:

(1) The Veterans' Home of California, Lancaster, as described in paragraph (4) of subdivision (b) of Section 1011.

(2) The Veterans' Home of California, Saticoy, as described in paragraph (5) of subdivision (b) of Section 1011.

(3) The Veterans' Home of California, West Los Angeles, as provided for in subdivision (a) of Section 1104.

(b) The total amount appropriated in accordance with subdivision (a) may not exceed the sum of thirty-one million dollars ($31,000,000).

(c) The homes specified in subdivision (a) may care for veterans with substance abuse disorders.

(d) Notwithstanding Section 13340 of the Government Code, in addition to the funds appropriated pursuant to this section, the federal matching funds available pursuant to the State Veterans' Home Assistance Improvement Act of 1977 (38 U.S.C. Sec. 8131 et seq.) are hereby continuously appropriated, without regard to fiscal years, to the Department of Veterans Affairs, subject to the approval of the Department of Finance, for the purpose of design, equipping, construction, renovation of, or expansion or repayment of any loan related to the projects specified in this section.

(e) Subject to approval of the Department of Finance, the Department of Veterans Affairs may expend state funds pursuant to this section for the design of projects specified in this section in anticipation of the receipt of federal matching funds.

SEC. 4. Section 1104.2 of the Military and Veterans Code, as added by Section 1 of Chapter 218 of the Statutes of 2002, is repealed.

SEC. 5. Section 1104.2 of the Military and Veterans Code, as added by Section 1 of Chapter 219 of the Statutes of 2002, is amended to read:

1104.2. (a) Notwithstanding Section 13340 of the Government Code, an amount, not to exceed the sum of fifteen million dollars ($15,000,000), is hereby continuously appropriated, without regard to fiscal years, from the Veterans' Home Fund to the Department of Veterans Affairs, subject to the approval of the Department of Finance, for the state's matching share for the design, construction, equipping, and renovation of the Veterans' Home of California, Yountville, as described in Section 1011.

(b) Excluding any funds required to pay for costs associated with issuing and administering general obligation bonds, any remaining general obligation bond funds available in the Veterans' Home Fund created under Section 1103 after funding the design, construction, equipping, expansion, or renovation of the Lancaster, Saticoy, West Los Angeles, or Yountville veterans homes, as specified in Section 1104.1 and subdivision (a), and projects funded through any Budget Act, are, notwithstanding Section 13340 of the Government Code, hereby continuously appropriated without regard to fiscal years to the Department of Veterans Affairs, subject to the approval of the Department of Finance, to fund the state's matching share for renovations, design, construction, and equipping at Yountville consistent with the purposes established in subdivision (a) of Section 1104.

(c) Notwithstanding Section 13340 of the Government Code, in addition to the funds appropriated pursuant to this section, the federal matching funds available pursuant to the State Veterans' Home Assistance Improvement Act of 1977 (38 U.S.C. Sec. 8131 et seq.), are hereby continuously appropriated, without regard to fiscal years, to the Department of Veterans Affairs, subject to the approval of the Department of Finance, for the purpose of design, construction, equipping, renovation of, or expansion or repayment of any loan related to the projects specified in this section.

(d) Subject to approval of the Department of Finance, the Department of Veterans Affairs may expend state funds pursuant to this section for the design of projects specified in this section in anticipation of the receipt of federal matching funds.

SEC. 6. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to equip, design, and construct various veterans' homes at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 238

An act to add Section 101.12 to the Streets and Highways Code, relating to highways.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 101.12 is added to the Streets and Highways Code, to read:

101.12. The department may place and maintain, or cause to be placed and maintained, signs on state highways directing motorists to communities within the geographical boundaries of a city, county, or city and county if all of the following conditions are satisfied:

(a) The name of the community is culturally unique and historically significant.

(b) The name of the community has resulted from the influence of a culture over a significant period of time.

(c) The general public and media commonly recognize the name of the community.

(d) The community is located within a city, county, or city and county.

(e) Signs are consistent with the signing requirements for the state highway system.

(f) The geographical boundary of the community is within three miles of the state highway exit.

(g) Trailblazing signs are installed on the appropriate streets or roads prior to installation of signs on the state highway.

(h) The city, county, or city and county provides funds from nonstate sources that cover all costs for the Department of Transportation to place and maintain, or cause to be placed and maintained, appropriate signs on state highways.

(i) The governing body of the city, county, or city and county in which the community is located adopts a resolution that does the following:

(A) Designates the name of the community that is to be used on directional signs.

(B) Defines the geographical boundaries of the community.

(C) Requests the department to post signs on state highways.

CHAPTER 239

An act to amend Sections 1012 and 1012.2 of the Military and Veterans Code, relating to veterans homes.

[Approved by Governor August 16, 2004. Filed with Secretary of State August 16, 2004.]

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

SECTION 1. Section 1012 of the Military and Veterans Code is amended to read:

1012. (a) Except as provided in Section 1012.4, the home is for aged and disabled persons who served in the Armed Forces of the United States of America who were discharged or released from active duty under honorable conditions from service, who are eligible for hospitalization or domiciliary care in a veterans' facility in accordance with the rules and regulations of the United States Department of Veterans Affairs, and who are bona fide residents of this state at the time of application; and for the spouses of these persons if all of the following conditions, as are applicable, are satisfied:

(1) Space is available.

(2) Joint residency will be in the best interests of the home member, as determined by the administrator.

(3) The spouse is a bona fide resident of this state at the time of application for admission to the home and either is married to, and has resided with, the home member for at least one year, or is the widow or widower of a recipient of the Medal of Honor or a former prisoner of war (POW).

(4) The home member and spouse agree to pay the fees and charges for joint residency, or for a widow or widower, for the residency, that the administrator may establish.

(b) (1) Veterans who qualify for benefits under this chapter due to service during a time of war shall be given priority over veterans who qualify due to service during a time of peace.

(2) Veterans who qualify for benefits under this chapter who are recipients of the Medal of Honor or who were prisoners of war (POWs) shall be given priority over all other qualified veterans, regardless of the level of care required.

(c) A resident spouse may continue residence after the veteran's death.

(d) The property of the home shall be used for this purpose.

SEC. 2. Section 1012.2 of the Military and Veterans Code is amended to read:

1012.2. Notwithstanding any other provisions of law, any member of the home who is receiving an aid and attendance allowance from the United States Veterans' Administration and who has no dependent spouse, child, grandchild, father, or mother shall pay to the home an amount equal to that allowance in all levels of care excluding domiciliary. One hundred percent of the moneys received by the home

under this section shall be placed to the credit of the home and shall augment the current appropriation for the support of the home.

CHAPTER 240

An act to add Section 25250.22 to the Health and Safety Code, relating to hazardous waste.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 25250.22 is added to the Health and Safety Code, to read:

25250.22. (a) Notwithstanding any other provision of state law, and to the extent consistent with the federal act, a filter that contains a residue of gasoline or diesel fuel, may be managed in accordance with the requirements in the department's regulations governing the management of used oil filters, unless the department adopts regulations establishing management standards specific to filters that contain those residues.

(b) Management of filters that contain residue of gasoline, and commingled filters that include filters that contain residue of gasoline, shall also meet all of the following requirements:

(1) The filters shall be stored in containers that are designed to prevent ignition of the gasoline and that are labeled ''used oil and gasoline filters.''

(2) For purposes of transportation, the filters shall be packaged, and the package shall be marked and labeled in accordance with the applicable requirements of Parts 172 (commencing with Section 172.1), 173 (commencing with Section 173.1), 178 (commencing with Section 178.1), and 179 (commencing with Section 179.1) of Title 49 of the Code of Federal Regulations.

(3) The filters shall be stored and otherwise managed in accordance with applicable state and local fire code regulations.

(4) Any gasoline, or used oil commingled with gasoline, that accumulates in containers or other equipment used for filter storage or recycling, and nonmetal filter material removed from filter housing, shall be evaluated pursuant to Section 66262.11 of Title 22 of the California Code of Regulations, to determine its regulatory status under the federal act, and it shall be managed accordingly.

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 241

An act to amend Section 1363.5 of the Fish and Game Code, relating to oak woodlands conservation.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 1363.5 of the Fish and Game Code is amended to read:

1363.5. (a) Commencing on June 30, 2003, and every two years thereafter, the board shall report to the Legislature and the Governor concerning the activities and expenditures of the fund.

(b) (1) In the first report to the Legislature, the board shall provide its best estimate of the total amount, in terms of acreage, species, and coverage, of oak woodlands habitat purchased with funds from the Habitat Conservation Fund and other funds pursuant to the California Wildlife Protection Act of 1990 (Chapter 9 (commencing with Section 2780) of Division 3.

(2) In each subsequent report, the board shall update the information required by paragraph (1) to reflect additional oak woodlands habitat purchased with funds from the Habitat Conservation Fund pursuant to Chapter 9 (commencing with Section 2780) of Division 3, and any purchases made with moneys deposited in the Oak Woodlands Conservation Fund.

(c) The board shall provide its best estimate in each report, the acreage, cover, and species of oak woodlands habitat purchased with all moneys from the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Fund.

(d) The board shall make all information available online at its Web site.

(e) This section shall become inoperative on July 1, 2020, and, as of January 1, 2021, is repealed, unless a later enacted statute that is enacted before January 1, 2021, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 242

An act to amend Section 1007 of the Fox Canyon Groundwater Management Agency Act (Chapter 1023 of the Statutes of 1982), relating to the Fox Canyon Groundwater Management Agency, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 1007 of the Fox Canyon Groundwater Management Agency Act (Chapter 1023 of the Statutes of 1982) is amended to read:

Sec. 1007. The groundwater extraction charge shall not exceed six dollars ($6) per acre-foot pumped per year.

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

In order to generate necessary funding, as soon as possible, for the management of groundwater in accordance with the Fox Canyon Groundwater Management Agency Act, it is necessary that this act take effect immediately.

CHAPTER 243

An act to add Section 425.10 to the Government Code, relating to State Grass.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

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

(a) Nassella pulchra, or purple needlegrass as it is commonly known, is the most extensive and widespread native perennial bunchgrass found in the state, with a range extending from the Oregon border into northern Baja California.

(b) The seed of this grass species was one of several used by many California Native American communities as a food source. It remains an important food source for wildlife.

(c) During the period of Mexican control of California, Nassella pulchra was used for cattle grazing to support the huge cowhide and tallow industry. Today, Nassella pulchra continues to provide forage for California's important cattle industry.

(d) The deep root systems of this grass support the survival of young oak trees by promoting mycorrihizal fungi, which are important to their health.With a lifespan of up to 100 years, Nassella pulchra provides food for more than 330 terrestrial species of life.

(e) Once established, Nassella pulchra helps repel the invasion of weeds and has been used for numerous restoration projects such as establishing a specific habitat for fauna, erosion control, and stormwater containment levees. It is hardy, drought resistant, desirable forage to livestock, and easily recognizable.

(f) Nassella pulchra burns more slowly than flash-burning annual stubble and speeds postfire recovery of burned habitat.

(g) Because Nassella pulchra is native to California, many who work with native plants and habitat restoration have already informally named this species as the State Grass.

(h) With new species of exotic grasses and weeds emerging everyday, it is important to recognize Nassella pulchra as a symbol of the heritage, splendor, and natural diversity found in the early days of California.

(i) Nassella pulchra is used as a teaching tool as a symbol of the natural environment of early California, and protecting the history of Nassella pulchra is essential to safeguarding this precious resource and enhancing grassland heritage throughout the state.

SEC. 2. Section 425.10 is added to the Government Code, to read:

425.10. Purple needlegrass, or Nassella pulchra, is the official State Grass.

CHAPTER 244

An act to amend Section 13 3/4 of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915), relating to the Los Angeles County Flood Control District.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section $13^3/_4$ of the Los Angeles County Flood Control Act (Chapter 755 of the Statutes of 1915) is amended to read:

Sec. $13^3/_4$. (a) The Los Angeles County Flood Control District may accept a transfer and conveyance of a storm drain improvement or drainage system lying within or outside the territorial limits of the district, if the improvement or system benefits property within the territorial limits of the district, and the governing body of the public agency that has constructed or acquired the improvement or system requests the district to accept the transfer and conveyance of the improvement or system.

(b) Upon acceptance, the district shall assume sole control and jurisdiction over the improvement or system and shall thereafter provide for the operation, maintenance, repair, and improvement thereof, except that the district shall not assume or be liable for any bonded indebtedness in connection with the improvement or system.

(c) As used in this section, ''public agency'' means the state, any state agency, any city, county, or city and county, whether chartered or not, any district, any public authority, any public agency, any municipal corporation, or any other political subdivision or public corporation of the state.

(d) Upon acceptance of any improvement or system under this section, the board of supervisors of the district may levy a special tax each year upon the taxable real property in the district sufficient to pay the cost and expenses of operating, maintaining, repairing, and improving the improvement or system so transferred and accepted, except for the payment of interest and principal on any outstanding bonds for which the district shall not be liable.

(e) The special tax may also be levied, collected, and expended to pay the costs of operating, maintaining, repairing, and improving all storm drain improvements or drainage systems, or both, constructed by the district with bond funds authorized at any bond election held under the authority of this act. The tax shall be levied and collected at the same time and in the same manner as the general tax for county purposes, and the revenue derived from the tax shall be paid into the county treasury

to the credit of the district and the board of supervisors may expend these funds to pay for costs described in this subdivision. Taxes levied under authority of this section shall be separate and distinct from, and shall be in addition to, the taxes authorized to be levied under Section 14 of this act.

(f) The board of supervisors of the district, by ordinance or resolution, may assign a designee to act on behalf of the district regarding the acceptance of a storm drain improvement and drainage system by the district. The designee shall report all acceptances to the board within 30 days of the end of the district's fiscal year, or at more frequent intervals if required by ordinance, resolution, or other legislative act adopted by the board of supervisors.

(g) The governing body of a public agency may assign a designee to act on its behalf regarding the transfer and conveyance of any storm drain improvement or drainage system to the district. The governing body may determine the procedure by which the assignment of the designee shall be made. The designee shall report any transfer and conveyance of any storm drain improvement or drainage system to the governing body of the public agency at intervals as required by the governing body of the public agency.

CHAPTER 245

An act to add and repeal Sections 25550 and 25550.5 of the Public Resources Code, relating to energy resources.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 25550 is added to the Public Resources Code, to read:

25550. (a) Notwithstanding subdivision (a) of Section 25522 and Section 25540.6, the commission shall establish a process to issue its final certification for any thermal powerplant and related facilities within six months after the filing of the application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and will comply with all applicable standards, ordinances, or laws. For purposes of this section, filing has the same meaning as in Section 25522.

(b) Thermal powerplants and related facilities reviewed under this process shall satisfy the requirements of Section 25520 and other necessary information required by the commission, by regulation, including the information required for permitting by each local, state, and regional agency that would have jurisdiction over the proposed thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, and the information required for permitting by each federal agency that has jurisdiction over the proposed thermal powerplant and related facilities.

(c) After acceptance of an application under this section, the commission shall not be required to issue a six-month final decision on the application if it determines there is substantial evidence in the record that the thermal powerplant and related facilities may result in a significant adverse impact on the environment or electrical system or does not comply with an applicable standard, ordinance, or law. Under this circumstance, the commission shall make its decision in accordance with subdivision (a) of Section 25522 and Section 25540.6, and a new application shall not be required.

(d) For an application that the commission accepts under this section, all local, regional, and state agencies that would have had jurisdiction over the proposed thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, shall provide their final comments, determinations, or opinions within 100 days after the filing of the application. The regional water quality control boards, as established pursuant to Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, shall retain jurisdiction over any applicable water quality standard that is incorporated into any final certification issued pursuant to this chapter.

(e) Thermal powerplants and related facilities that demonstrate superior environmental or efficiency performance shall receive priority in review.

(f) With respect to a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the applicant has a contract with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the plant.

(g) With respect to a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the thermal powerplant and related facilities complies with all regulations adopted by the commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

(h) To implement this section, the commission may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section

11340) of Part 2 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(i) This section shall remain in effect 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 25550.5 is added to the Public Resources Code, to read:

25550.5. (a) Notwithstanding subdivision (a) of Section 25522 and Section 25540.6, the commission shall establish a process to issue its final decision on an application for certification for the repowering of a thermal powerplant and related facilities within 180 days after the filing of the application for certification that, on the basis of an initial review, shows that there is substantial evidence that the project will not cause a significant adverse impact on the environment or electrical system and that the project will comply with all applicable standards, ordinances, regulations, and statutes. For purposes of this section, filing has the same meaning as in Section 25522.

(b) The repowering of a thermal powerplant and related facilities reviewed under this process shall satisfy the requirements of Section 25520 and other necessary information required by the commission by regulation, including the information required for permitting by each local, state, and regional agency that would have jurisdiction over the proposed repowering of a thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, and the information required for permitting by each federal agency that has jurisdiction over the proposed repowering of a thermal powerplant and related facilities.

(c) After an application is filed under this section, the commission shall not be required to issue a final decision on the application within 180 days if it determines there is substantial evidence in the record that the thermal powerplant and related facilities may result in a significant adverse impact on the environment or electrical system or does not comply with an applicable standard, ordinance, regulation, or statute. Under this circumstance, the commission shall make its decision in accordance with subdivision (a) of Section 25522 and Section 25540.6, and a new application shall not be required.

(d) For an application that the commission accepts under this section, any local, regional, or state agency that would have had jurisdiction over the proposed thermal powerplant and related facilities, but for the exclusive jurisdiction of the commission, shall provide its final comments, determinations, or opinions within 100 days after the filing

of the application. The regional water quality control board, as established pursuant to Chapter 4 (commencing with Section 13200) of Division 7 of the Water Code, shall retain jurisdiction over any applicable water quality standard that is incorporated into any final certification issued pursuant to this chapter.

(e) The repowering of a thermal powerplant and related facilities that demonstrate superior environmental or efficiency performance improvement shall receive first priority in review by the commission.

(f) With respect to the repowering of a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the applicant has contracted with a general contractor and has contracted for an adequate supply of skilled labor to construct, operate, and maintain the plant.

(g) With respect to a repowering of a thermal powerplant and related facilities reviewed under the process established by this chapter, it shall be shown that the thermal powerplant and related facilities complies with all regulations adopted by the commission that ensure that an application addresses disproportionate impacts in a manner consistent with Section 65040.12 of the Government Code.

(h) To implement this section, the commission may adopt emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. For purposes of that chapter, including, without limitation, Section 11349.6 of the Government Code, the adoption of the regulations shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health, safety, and general welfare.

(i) For purposes of this section, ''repowering'' means a project for the modification of an existing generation unit of a thermal powerplant that meets all of the following criteria:

(1) The project complies with all applicable requirements of federal, state, and local laws.

(2) The project is located on the site of, and within the existing boundaries of, an existing thermal facility.

(3) The project will not require significant additional rights-of-way for electrical or fuel-related transmission facilities.

(4) The project will result in significant and substantial increases in the efficiency of the production of electricity, including, but not limited to, reducing the heat rate, reducing the use of natural gas, reducing the use and discharge of water, and reducing air pollutants emitted by the project, as measured on a per kilowatthour basis.

(j) 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 246

An act to amend Sections 9904, 9910, 9912, 9932, 9941, 9942, 9943, 9944, 9971, 9972, 9973, 9974, 9975, 9976, 9977, 9978, 9979, 9980, 9981, 9982, 10003, 10006, 10061, 10062, 10063, 10064, 10065, 10066, 10067, 10068, 10103, and 10151 of, to amend the headings of Article 3 (commencing with Section 9941) and Article 4 (commencing with Section 9971) of Chapter 2 of Part 2 of Division 5 of, to add Sections 9914, 9933, and 10100 to, to repeal Sections 9905, 9906, 9911, 10002, 10005, 10008, 10009, 10104, and 10105 of, to repeal Article 6 (commencing with Section 10031), Article 8 (commencing with Section 10081), and Article 10 (commencing with Section 10131) of Chapter 2 of Part 2 of Division 5 of, and to repeal and add Sections 9907, 10004, 10007, 10101, and 10102 of, the Food and Agricultural Code, relating to diseased animals, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 9904 of the Food and Agricultural Code is amended to read:

9904. ''Bovine animals'' means cattle.

SEC. 2. Section 9905 of the Food and Agricultural Code is repealed.

SEC. 3. Section 9906 of the Food and Agricultural Code is repealed.

SEC. 4. Section 9907 of the Food and Agricultural Code is repealed.

SEC. 5. Section 9907 is added to the Food and Agricultural Code, to read:

9907. ''State TB status'' means an area so declared by the United States Department of Agriculture.

SEC. 6. Section 9910 of the Food and Agricultural Code is amended to read:

9910. ''Reactor'' or ''reacting bovine animal'' means any bovine animal that reacts positively to a tuberculosis test or that is determined to be tuberculosis upon examination.

SEC. 7. Section 9911 of the Food and Agricultural Code is repealed.

SEC. 8. Section 9912 of the Food and Agricultural Code is amended to read:

9912. ''Tuberculosis test'' means the use of an official test for diagnosing tuberculosis in cattle.

SEC. 9. Section 9914 is added to the Food and Agricultural Code, to read:

9914. ''Tuberculosis-exposed cattle'' means cattle that have been in contact with, or exposed to, any reactor or tuberculosis infected premises, or any tuberculosis infected material.

SEC. 10. Section 9932 of the Food and Agricultural Code is amended to read:

9932. The State Veterinarian may make regulations as are reasonably necessary to carry into effect the provisions of this chapter to prevent bovine tuberculosis from entering and spreading within this state.

SEC. 11. Section 9933 is added to the Food and Agricultural Code, to read:

9933. The department may enter into any cooperative agreement with the United States Department of Agriculture to undertake tuberculosis control pursuant to this chapter.

SEC. 12. The heading of Article 3 (commencing with Section 9941) of Chapter 2 of Part 2 of Division 5 of the Food and Agricultural Code is amended to read:

Article 3. Sale and Use of Tuberculosis Tests

SEC. 13. Section 9941 of the Food and Agricultural Code is amended to read:

9941. (a) The State Veterinarian may designate approved veterinarians to buy, possess, or use tuberculosis tests and may suspend or revoke that designation.

(b) The State Veterinarian may designate a duly authorized representative of the department or of the United States Department of Agriculture to possess or use tuberculosis tests and may suspend or revoke that designation.

SEC. 14. Section 9942 of the Food and Agricultural Code is amended to read:

9942. Any sale or disposition of tuberculosis tests within the state shall be reported to the department within five days after the sale or disposition.

SEC. 15. Section 9943 of the Food and Agricultural Code is amended to read:

9943. (a) It is a misdemeanor punishable by imprisonment in the county jail for not less than 90 days, without alternative of a fine in any

case, for any person who is not an approved veterinarian to buy, possess, or use tuberculosis tests.

(b) It is a misdemeanor punishable by imprisonment in a county jail for not less than 90 days, without alternative of a fine in any case, for any person who is not a duly authorized representative of the department or of the United States Department of Agriculture to possess or use tuberculosis tests.

SEC. 16. Section 9944 of the Food and Agricultural Code is amended to read:

9944. It is unlawful for any person to sell or otherwise dispose of any tuberculosis test in the state that has not been produced under license of the Agricultural Research Service of the United States Department of Agriculture.

SEC. 17. The heading of Article 4 (commencing with Section 9971) of Chapter 2 of Part 2 of Division 5 of the Food and Agricultural Code is amended to read:

Article 4. Tuberculosis Tests

SEC. 18. Section 9971 of the Food and Agricultural Code is amended to read:

9971. Any approved veterinarian or duly authorized representative of the department or of the United States Department of Agriculture may ear tag or otherwise identify any bovine animal to establish the identity of the animal, while applying a tuberculosis test to it.

SEC. 19. Section 9972 of the Food and Agricultural Code is amended to read:

9972. The result of every tuberculosis test shall be reported to the State Veterinarian by the veterinarian who conducted the test within 48 hours after the completion of the test.

SEC. 20. Section 9973 of the Food and Agricultural Code is amended to read:

9973. Every reactor, immediately upon the determination of such reaction, shall be identified, pursuant to regulations of the department and the United States Department of Agriculture, by its owner or the owner's agent under the supervision of the approved veterinarian who conducts the tuberculosis test.

SEC. 21. Section 9974 of the Food and Agricultural Code is amended to read:

9974. If the State Veterinarian has reason to suspect an irregularity in the application of a tuberculosis test or the identification of reactors, the State Veterinarian may enter any premises for the purpose of examining any bovine animals in or on the premises to determine if there has been any abuse or misuse of tuberculosis, or any faulty, unskillful,

or irregular technique or procedure in the application of the tuberculosis test, identification of reactors, or identification of animals tested for tuberculosis.

SEC. 22. Section 9975 of the Food and Agricultural Code is amended to read:

9975. It is unlawful for any person to do any of the following:

(a) Obstruct, attack, or interfere with, or permit to be obstructed, attacked, or interfered with, the State Veterinarian or an approved veterinarian who is conducting a tuberculosis test.

(b) Neglect or fail to properly secure and restrain any bovine animal to be tuberculosis tested, or under tuberculosis test, for examination, injection, observation, or other procedures that pertain to a tuberculosis test.

SEC. 23. Section 9976 of the Food and Agricultural Code is amended to read:

9976. It is a misdemeanor which is punishable by imprisonment in the county jail for not less than 90 days, without the alternative of a fine in any case, for any person to defeat or interfere with or to attempt to defeat or interfere with a tuberculosis test.

SEC. 24. Section 9977 of the Food and Agricultural Code is amended to read:

9977. It is a misdemeanor which is punishable by imprisonment in the county jail for not less than 90 days, without the alternative of a fine in any case, for any person to obstruct, defeat, or interfere with or to attempt to obstruct, defeat, or interfere with a tuberculosis test by transporting from a premises or by hiding away or sequestering any bovine animal from or by bringing substitute bovine animals onto, such premises after receipt of a notification by the owner or person in charge of such animals on the premises from the department or from an approved veterinarian who is conducting tuberculosis tests, stating that the animals or herd on such premises will be tuberculosis tested on or before a certain date or will be under tuberculosis test for a stated period and that the animals or herd shall be held on the stated premises for a specified period.

SEC. 25. Section 9978 of the Food and Agricultural Code is amended to read:

9978. Permission in writing may be obtained from the department or the approved veterinarian who is conducting the tuberculosis tests to allow any necessary movement of the animals required to be held pursuant to Section 9977. Upon the completion of the tuberculosis test that is referred to in the notification, the department or the approved veterinarian shall issue a written release from the holding requirements of the notice.

SEC. 26. Section 9979 of the Food and Agricultural Code is amended to read:

9979. It is unlawful for any person to apply a tuberculosis test to any bovine animal that has at any time been found by an approved veterinarian to be a reactor.

SEC. 27. Section 9980 of the Food and Agricultural Code is amended to read:

9980. It is unlawful for any person to knowingly apply tuberculosis tests that are not approved tests.

SEC. 28. Section 9981 of the Food and Agricultural Code is amended to read:

9981. It is unlawful for any person to have any tuberculosis infected or exposed bovine animal at any livestock fair or show.

SEC. 29. Section 9982 of the Food and Agricultural Code is amended to read:

9982. It is unlawful for any person to knowingly sell, after notification of its condition from the department, any bovine animal that has tuberculosis as shown by a positive reaction to the tuberculosis test, physical examination, or any other method which is recognized by the department, unless the person has first obtained a permit in writing from the department.

SEC. 30. Section 10002 of the Food and Agricultural Code is repealed.

SEC. 31. Section 10003 of the Food and Agricultural Code is amended to read:

10003. When the department establishes a tuberculosis control area, the affected industry shall be notified.

SEC. 32. Section 10004 of the Food and Agricultural Code is repealed.

SEC. 33. Section 10004 is added to the Food and Agricultural Code, to read:

10004. The State Veterinarian may authorize the testing of any cattle in a tuberculosis control area to determine which animals are affected with tuberculosis.

SEC. 34. Section 10005 of the Food and Agricultural Code is repealed.

SEC. 35. Section 10006 of the Food and Agricultural Code is amended to read:

10006. All owners of cattle within a tuberculosis control area that are subject to examination and tuberculosis testing shall, upon request of the department, provide necessary facilities for conducting tuberculosis tests, and render such assistance as may be required.

SEC. 36. Section 10007 of the Food and Agricultural Code is repealed.

SEC. 37. Section 10007 is added to the Food and Agricultural Code, to read:

10007. Cattle moving into a tuberculosis control area must meet the requirements specified by the State Veterinarian.

SEC. 38. Section 10008 of the Food and Agricultural Code is repealed.

SEC. 39. Section 10009 of the Food and Agricultural Code is repealed.

SEC. 40. Article 6 (commencing with Section 10031) of Chapter 2 of Part 2 of Division 5 of the Food and Agricultural Code is repealed.

SEC. 41. Section 10061 of the Food and Agricultural Code is amended to read:

10061. The State Veterinarian may impose a quarantine pursuant to Section 9562 when any bovine animal reacts positively to a tuberculosis test conducted by an approved veterinarian or a duly authorized representative of the department or of the United States Department of Agriculture, or determined to be tuberculous upon physical examination.

SEC. 42. Section 10062 of the Food and Agricultural Code is amended to read:

10062. The value of the reacting bovine animal for which indemnity is paid shall be determined in accordance with the provisions in Sections 9592 and 9593.

SEC. 43. Section 10063 of the Food and Agricultural Code is amended to read:

10063. Within 30 days after the appraisal of the reacting bovine animal, it shall be slaughtered under the supervision of the State Veterinarian.

SEC. 44. Section 10064 of the Food and Agricultural Code is amended to read:

10064. Animals shall be tested or slaughtered pursuant to this article even if indemnity funds are unavailable.

SEC. 45. Section 10065 of the Food and Agricultural Code is amended to read:

10065. The slaughtering of any reacting bovine animal, pursuant to this article, shall be under the supervision of the department, or of the United States Department of Agriculture.

SEC. 46. Section 10066 of the Food and Agricultural Code is amended to read:

10066. The carcasses of the slaughtered animals shall be disposed of pursuant to the regulations of the department or the rules and regulations of the United States Department of Agriculture that govern meat inspection.

SEC. 47. Section 10067 of the Food and Agricultural Code is amended to read:

10067. If an animal is slaughtered pursuant to this article, and indemnity funds are available, the owner may receive part or all of the following:

(a) The proceeds of the sale of the salvage of the animal.

(b) From the United States Department of Agriculture, any sum that is authorized to be paid to the owner from any appropriation that is made by the United States Department of Agriculture to assist in the eradication of tuberculosis in cattle in this state.

SEC. 48. Section 10068 of the Food and Agricultural Code is amended to read:

10068. Indemnity provided by this article shall not be paid to any person in any of the following cases:

(a) For any bovine animal that is brought into a tuberculosis control area that reacts to a tuberculosis test that is applied within 90 days after arrival of the animal in the area, as provided for in this chapter.

(b) For any bovine animal that is brought into a tuberculosis control area in violation of any law, any regulation of the department, or any rule or regulation of the United States Department of Agriculture.

(c) For any reacting bovine animal, until the premises, where the animal had been kept, have been cleaned and disinfected by the owner in a manner that is approved by an agent of the department or of the United States Department of Agriculture.

(d) For any reacting bovine animal that is not slaughtered within 30 days after the animal is appraised.

(e) For any animal that is owned by a federal, state, or local government entity.

(f) If the person has violated any provision of this chapter that relates to a tuberculosis control area or any regulation that is made by the department that relates to such an area.

SEC. 49. Article 8 (commencing with Section 10081) of Chapter 2 of Part 2 of Division 5 of the Food and Agricultural Code is repealed.

SEC. 50. Section 10100 is added to the Food and Agricultural Code, to read:

10100. The State Veterinarian may impose a quarantine pursuant to Section 9562 when it has been determined that any bovine animal has been exposed to tuberculosis.

SEC. 51. Section 10101 of the Food and Agricultural Code is repealed.

SEC. 52. Section 10101 is added to the Food and Agricultural Code, to read:

10101. The State Veterinarian may impose tuberculosis testing requirements for tuberculosis-exposed cattle.

SEC. 53. Section 10102 of the Food and Agricultural Code is repealed.

SEC. 54. Section 10102 is added to the Food and Agricultural Code, to read:

10102. Indemnity for reacting tuberculosis-exposed cattle may be available and shall be in accordance with the provision stated in Article 7 (commencing with Section 10061) of this chapter.

SEC. 55. Section 10103 of the Food and Agricultural Code is amended to read:

10103. The State Veterinarian may issue a special permit for the movement of tuberculosis-exposed cattle to any of the following:

(a) An establishment that is operating under state, state approved, or federal meat inspection, or a public stockyards designated by the department to handle reactors and tuberculosis-exposed cattle for slaughter.

(b) Premises where tuberculosis-exposed cattle are kept.

(c) Premises where no spread of tuberculosis to other cattle could occur.

SEC. 56. Section 10104 of the Food and Agricultural Code is repealed.

SEC. 57. Section 10105 of the Food and Agricultural Code is repealed.

SEC. 58. Article 10 (commencing with Section 10131) of Chapter 2 of Part 2 of Division 5 of the Food and Agricultural Code is repealed.

SEC. 59. Section 10151 of the Food and Agricultural Code is amended to read:

10151. If the owner or any person that is in charge of cattle, after 10 days' written notice, refuses properly to confine in corrals or stanchions any cattle that are subject to examination, tuberculosis testing, identification, or slaughter, the department shall be entitled to reimbursement from the owner for necessary costs incurred to properly examine, tuberculosis test, identify, or slaughter the cattle.

SEC. 60. 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. 61. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to effectively control and eradicate bovine tuberculosis, and thereby reduce the danger to the health and safety of the public posed by bovine tuberculosis, at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 247

An act to amend Sections 21626, 21628, 21636, and 21641 of the Business and Professions Code, to amend Sections 12000 and 12081 of the Health and Safety Code, to amend Sections 12020, 12026.2, 12070, 12071, 12072, 12078, 12125, 12133, 12301, and 12807 of the Penal Code, and to amend Section 31600 of the Vehicle Code, relating to firearms, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 21626 of the Business and Professions Code is amended to read:

21626. (a) A ''secondhand dealer,'' as used in this article, means and includes any person, copartnership, firm, or corporation whose business includes buying, selling, trading, taking in pawn, accepting for sale on consignment, accepting for auctioning, or auctioning secondhand tangible personal property. A ''secondhand dealer'' does not include a ''coin dealer'' or participants at gun shows or events, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, who are not required to be licensed pursuant to Section 12071 of the Penal Code, who are acting in compliance with the requirements of Section 12070 and subdivision (d) of Section 12072 of the Penal Code, and who are not a ''Gun Show Trader,'' as described in paragraph (5) of subdivision (b) of Section 12070 of the Penal Code.

(b) As used in this section, a ''coin dealer'' means any person, firm, partnership, or corporation whose principal business is the buying, selling, and trading of coins, monetized bullion, or commercial grade ingots of gold, or silver, or other precious metals.

SEC. 2. Section 21628 of the Business and Professions Code is amended to read:

21628. Every secondhand dealer or coin dealer described in Section 21626 shall report daily, or on the first working day after receipt or purchase of the property, on forms either approved or provided at actual

cost by the Department of Justice, all tangible personal property which he or she has purchased, taken in trade, taken in pawn, accepted for sale on consignment, or accepted for auctioning, to the chief of police or to the sheriff, in accordance with the provisions of Sections 21630 and 21633 and subdivision (j) of this section. The report shall be legible, prepared in English, completed where applicable, and include, but not be limited to, the following information:

(a) The name and current address of the intended seller or pledger of the property.

(b) The identification of the intended seller or pledger. The identification of the seller or pledger of the property shall be verified by the person taking the information. The verification shall be valid if the person taking the information reasonably relies on any one of the following documents, provided that the document is currently valid or has been issued within five years and contains a photograph or description, or both, of the person named on it, is signed by the person, and bears a serial or other identifying number:

(1) A passport of the United States.

(2) A driver's license issued by any state, or Canada.

(3) An identification card issued by any state.

(4) An identification card issued by the United States.

(5) A passport from any other country in addition to another item of identification bearing an address.

(c) A complete and reasonably accurate description of serialized property, including, but not limited to, the following: serial number and other identifying marks or symbols, owner-applied numbers, manufacturer's named brand, and model name or number. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required information may be obtained by removal of a watchband, then the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(d) A complete and reasonably accurate description of nonserialized property, including, but not limited to, the following: size, color, material, manufacturer's pattern name (when known), owner-applied numbers and personalized inscriptions and other identifying marks or symbols. Watches need not be disassembled when special skill or special tools are required to obtain the required information, unless specifically requested to do so by a peace officer. A special tool does not include a penknife, caseknife, or similar instrument and disassembling a watch

with a penknife, caseknife, or similar instrument does not constitute a special skill. In all instances where the required information may be obtained by removal of a watchband, then the watchband shall be removed. The cost associated with opening the watch shall be borne by the pawnbroker, secondhand dealer, or customer.

(e) A certification by the intended seller or pledger that he or she is the owner of the property or has the authority of the owner to sell or pledge the property.

(f) A certification by the intended seller or pledger that to his or her knowledge and belief the information is true and complete.

(g) A legible fingerprint taken from the intended seller or pledger, as prescribed by the Department of Justice. This requirement does not apply to a coin dealer, unless required pursuant to local regulation.

(h) When a secondhand dealer complies with all of the provisions of this section, he or she shall be deemed to have received from the seller or pledger adequate evidence of authority to sell or pledge the property for all purposes included in this article, and Division 8 (commencing with Section 21000) of the Financial Code.

In enacting this subdivision, it is the intent of the Legislature that its provisions shall not adversely affect the implementation of, or prosecution under, any provision of the Penal Code.

(i) Any person who conducts business as a secondhand dealer at any gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, outside the jurisdiction that issued the secondhand dealer license in accordance with subdivision (d) of Section 21641, may be required to submit a duplicate of the transaction report prepared pursuant to this section to the local law enforcement agency where the gun show or event is conducted.

(j) (1) The Department of Justice shall, in consultation with appropriate local law enforcement agencies, develop clear and comprehensive descriptive categories denoting tangible personal property subject to the reporting requirements of this section. These categories shall be incorporated by secondhand dealers and coin dealers described in Section 21626 for purposes of the reporting requirements set forth herein. Any required report shall be transmitted by electronic means. The Department of Justice and local law enforcement agencies, in consultation with representatives from the secondhand dealer and coin dealer businesses, shall develop a standard format to be used statewide to transmit this report electronically.

(2) Twelve months after the format and the categories described in paragraph (1) have been developed, each secondhand dealer and coin dealer shall electronically report using this format the information required by this section under these reporting categories. Until that time, each secondhand dealer and coin dealer may either continue to report this

information using existing forms and procedures or may begin electronically reporting this information under the reporting categories and using the format described in paragraph (1) as soon as each has been developed.

(3) A coin dealer who engages in less than 10 transactions each week in which he or she has purchased, taken in trade, taken in pawn, accepted for sale or consignment, or accepted for auctioning tangible personal property, shall report the information required by this section under the reporting categories described in paragraph (1) on a form developed by the Attorney General that the coin dealer shall transmit each day by facsimile transmission or by mail to the chief of police or sheriff. A transaction shall consist of not more than one item. Nothing in this section shall prohibit up to 10 transactions with the same customer per week, provided that the cumulative total per week for all customers does not exceed 10 transactions. Until that form is developed, these coin dealers shall continue to report information required by this section using existing forms and procedures. If these transactions increase to 10 per week, the coin dealer shall electronically report using the format described in paragraph (1) the information required by this section beginning six months after his or her transactions exceed 10 per week or 12 months after the format described in paragraph (1) has been developed, whichever occurs later.

(4) For purposes of this subdivision, ''item'' shall mean any single physical article. However, with respect to a commonly accepted grouping of articles that are purchased as a set, including, but not limited to, a pair of earrings or place settings of china, silverware, or other tableware, ''item'' shall mean that commonly accepted grouping.

(5) Nothing in this subdivision shall be construed as excepting a secondhand dealer from the fingerprinting requirement of subdivision (g).

SEC. 3. Section 21636 of the Business and Professions Code is amended to read:

21636. (a) Every secondhand dealer and coin dealer shall retain in his or her possession for a period of 30 days all tangible personal property reported under Sections 21628, 21629, and 21630. The 30-day holding period with respect to this tangible personal property shall commence with the date the report of its acquisition was made to the chief of police or to the sheriff by the secondhand dealer and coin dealer. The chief of police or the sheriff may for good cause, as specified by the Department of Justice, authorize prior disposition of any property described in a specific report, provided that a secondhand dealer who disposes of tangible personal property pursuant to that authorization shall report the sale thereof to the chief of police or the sheriff.

(b) During the 30-day holding period specified in subdivision (a) every secondhand dealer and coin dealer shall produce any tangible personal property reported under Sections 21628, 21629, and 21630 for inspection by any peace officer or employee designated by the chief of police or sheriff.

(c) Property subject to inspection as specified in subdivision (b) and property held in pawn, which is stored off the business premises of the licensee, shall, upon request for inspection, be produced at the licensee's business premises within one business day of a request.

(d) Any person who conducts business as a secondhand dealer at any gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, outside the jurisdiction that issued the secondhand dealer license in accordance with subdivision (d) of Section 21641, may be required to submit for inspection, as specified in subdivision (b), any firearm acquired at a gun show or event within 48 hours of the request of the local law enforcement agency in the jurisdiction where the gun show or event was conducted at a location specified by the local law enforcement agency.

SEC. 4. Section 21641 of the Business and Professions Code is amended to read:

21641. (a) The chief of police, the sheriff or, where appropriate, the police commission, shall accept an application for and grant a license permitting the licensee to engage in the business of secondhand dealer, as defined in Section 21626, to an applicant who has not been convicted of an attempt to receive stolen property or any other offense involving stolen property. Prior to the granting of a license, the licensing authority shall submit the application to the Department of Justice. If the Department of Justice does not comment on the application within 30 days thereafter, the licensing authority may grant the applicant a license. All forms for application and licensure, and license renewal, shall be prescribed and provided by the Department of Justice. A fee may be charged to the applicant as specified by the Department of Justice and the local licensing authority for processing the initial license application.

(b) For the purposes of this section, ''convicted'' means a plea or verdict of guilty or a conviction following a plea of nolo contendere.

(c) Notwithstanding subdivisions (a) and (b), no person shall be denied a secondhand dealer's license solely on the grounds that he or she violated any provision contained in Article 4 (commencing with Section 21625) or Article 5 (commencing with Section 21650) of this chapter, or any provision contained in Chapter 2 (commencing with Section 21200) of Division 8 of the Financial Code, unless the violation demonstrates a pattern of conduct.

(d) Any person licensed as a firearms dealer pursuant to Section 12071 of the Penal Code, who is conducting business at gun shows or

events pursuant to subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071 of the Penal Code, and who has a valid secondhand dealer license granted by the appropriate local authorities in the jurisdiction where the firearms dealer license has been granted, shall be authorized to conduct business as a secondhand dealer at any gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, or its successor, without regard to the jurisdiction within this state that issued the secondhand dealer license pursuant to subdivision (a) of this section. No additional fees or separate secondhand dealer license shall be required by any agency having jurisdiction over the locality where the gun show or event is conducted. However, the person shall otherwise be subject to, and comply with, the requirements of this article when he or she acts as a secondhand dealer at the gun show or event to the same extent as if he or she were licensed as a secondhand dealer in the jurisdiction in which the gun show or event is being conducted.

SEC. 5. Section 12000 of the Health and Safety Code is amended to read:

12000. For the purposes of this part, ''explosives'' means any substance, or combination of substances, the primary or common purpose of which is detonation or rapid combustion, and which is capable of a relatively instantaneous or rapid release of gas and heat, or any substance, the primary purpose of which, when combined with others, is to form a substance capable of a relatively instantaneous or rapid release of gas and heat. ''Explosives'' includes, but is not limited to, any explosives as defined in Section 841 of Title 18 of the United States Code and published pursuant to Section 555.23 of Title 27 of the Code of Federal Regulations, and any of the following:

(a) Dynamite, nitroglycerine, picric acid, lead azide, fulminate of mercury, black powder, smokeless powder, propellant explosives, detonating primers, blasting caps, or commercial boosters.

(b) Substances determined to be division 1.1, 1.2, 1.3, or 1.6 explosives as classified by the United States Department of Transportation.

(c) Nitro carbo nitrate substances (blasting agent) classified as division 1.5 explosives by the United States Department of Transportation.

(d) Any material designated as an explosive by the State Fire Marshal. The designation shall be made pursuant to the classification standards established by the United States Department of Transportation. The State Fire Marshal shall adopt regulations in accordance with the Government Code to establish procedures for the classification and designation of explosive materials or explosive devices that are not under the jurisdiction of the United States

Department of Transportation pursuant to provisions of Section 841 of Title 18 of the United States Code and published pursuant to Section 555.23 of Title 27 of the Code of Federal Regulations that define explosives.

(e) Certain division 1.4 explosives as designated by the United States Department of Transportation when listed in regulations adopted by the State Fire Marshal.

(f) For the purposes of this part, ''explosives'' does not include any destructive device, as defined in Section 12301 of the Penal Code, nor does it include ammunition or small arms primers manufactured for use in shotguns, rifles, and pistols.

SEC. 6. Section 12081 of the Health and Safety Code is amended to read:

12081. Except as limited by Chapter 6 (commencing with Section 140) of Division 1 of the Labor Code and Section 18930, the State Fire Marshal shall prepare and adopt, in accordance with Chapter 3.5 (commencing at Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, reasonable regulations that are not in conflict with this part, relating to the sale, use, handling, possession, and storage of explosives.

The building standards adopted and submitted for approval pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 and the other regulations adopted by the State Fire Marshal shall do all of the following:

(a) Make reasonable allowances for storage facilities in existence when the regulations become effective. No allowance, however, shall be made for storage facilities which constitute a distinct hazard to life and property, nor shall any allowance be made for storage facilities wherein proper safeguards for the control and security of explosives cannot be maintained.

(b) Be based on performance standards wherever possible.

(c) Make reasonable allowances for the storage of gunpowder for commercial and private use. No allowance, however, shall be made for storage facilities which constitute a distinct hazard to life and property, nor shall any allowance be made for storage facilities wherein proper safeguards for the control and security of explosives cannot be maintained.

(d) Set uniform requirements for the use and handling of explosives that would apply statewide.

(e) The building standards published in the California Building Standards Code relating to storage of explosives and the other regulations adopted by the State Fire Marshal pursuant to this section shall apply uniformly throughout the state, and no city, county, city and county, or other political subdivision of this state, including, but not

limited to, a chartered city, county, or city and county, shall adopt or enforce any ordinance or regulation that is inconsistent with this section.

(f) In making the regulations, the State Fire Marshal shall consider as evidence of generally accepted safety standards the publications of the National Fire Protection Association, the United States Bureau of Mines, the United States Department of Defense, and the Institute of Makers of Explosives.

(g) The regulations shall establish standards relating to the size, form, contents, and location of caution placards to be placed on or near storage facilities for division 1.1, 1.2, and 1.3 explosives as set forth in Article 77 of the Uniform Fire Code of the International Conference of Building Officials and the Western Fire Chiefs Association, Inc. or similar standards that are consistent with the United States Department of Transportation classifications, or for any explosives as defined in Section 841 of Title 18 of the United States Code and published pursuant to Section 555.23 of Title 27 of the Code of Federal Regulations.

SEC. 7. Section 12020 of the Penal Code is amended to read:

12020. (a) Any person in this state who does any of the following is punishable by imprisonment in a county jail not exceeding one year or in the state prison:

(1) Manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, lends, or possesses any cane gun or wallet gun, any undetectable firearm, any firearm which is not immediately recognizable as a firearm, any camouflaging firearm container, any ammunition which contains or consists of any fléchette dart, any bullet containing or carrying an explosive agent, any ballistic knife, any multiburst trigger activator, any nunchaku, any short-barreled shotgun, any short-barreled rifle, any metal knuckles, any belt buckle knife, any leaded cane, any zip gun, any shuriken, any unconventional pistol, any lipstick case knife, any cane sword, any shobi-zue, any air gauge knife, any writing pen knife, any metal military practice handgrenade or metal replica handgrenade, or any instrument or weapon of the kind commonly known as a blackjack, slungshot, billy, sandclub, sap, or sandbag.

(2) Commencing January 1, 2000, manufactures or causes to be manufactured, imports into the state, keeps for sale, or offers or exposes for sale, or who gives, or lends, any large-capacity magazine.

(3) Carries concealed upon his or her person any explosive substance, other than fixed ammunition.

(4) Carries concealed upon his or her person any dirk or dagger.

However, a first offense involving any metal military practice handgrenade or metal replica handgrenade shall be punishable only as an infraction unless the offender is an active participant in a criminal street gang as defined in the Street Terrorism and Enforcement and

Prevention Act (Chapter 11 (commencing with Section 186.20) of Title 7 of Part 1). A bullet containing or carrying an explosive agent is not a destructive device as that term is used in Section 12301.

(b) Subdivision (a) does not apply to any of the following:

(1) The sale to, purchase by, or possession of short-barreled shotguns or short-barreled rifles by police departments, sheriffs' offices, marshals' offices, the California Highway Patrol, the Department of Justice, or the military or naval forces of this state or of the United States for use in the discharge of their official duties or the possession of short-barreled shotguns and short-barreled rifles by peace officer members of a police department, sheriff's office, marshal's office, the California Highway Patrol, or the Department of Justice when on duty and the use is authorized by the agency and is within the course and scope of their duties and the peace officer has completed a training course in the use of these weapons certified by the Commission on Peace Officer Standards and Training.

(2) The manufacture, possession, transportation or sale of short-barreled shotguns or short-barreled rifles when authorized by the Department of Justice pursuant to Article 6 (commencing with Section 12095) of this chapter and not in violation of federal law.

(3) The possession of a nunchaku on the premises of a school which holds a regulatory or business license and teaches the arts of self-defense.

(4) The manufacture of a nunchaku for sale to, or the sale of a nunchaku to, a school which holds a regulatory or business license and teaches the arts of self-defense.

(5) Any antique firearm. For purposes of this section, ''antique firearm'' means any firearm not designed or redesigned for using rimfire or conventional center fire ignition with fixed ammunition and manufactured in or before 1898 (including any matchlock, flintlock, percussion cap, or similar type of ignition system or replica thereof, whether actually manufactured before or after the year 1898) and also any firearm using fixed ammunition manufactured in or before 1898, for which ammunition is no longer manufactured in the United States and is not readily available in the ordinary channels of commercial trade.

(6) Tracer ammunition manufactured for use in shotguns.

(7) Any firearm or ammunition that is a curio or relic as defined in Section 478.11 of Title 27 of the Code of Federal Regulations and which is in the possession of a person permitted to possess the items pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition who obtains title to these items by bequest or

intestate succession may retain title for not more than one year, but actual possession of these items at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the firearms or ammunition by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a).

(8) Any other weapon as defined in subsection (e) of Section 5845 of Title 26 of the United States Code and which is in the possession of a person permitted to possess the weapons pursuant to the federal Gun Control Act of 1968 (Public Law 90-618), as amended, and the regulations issued pursuant thereto. Any person prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing these weapons who obtains title to these weapons by bequest or intestate succession may retain title for not more than one year, but actual possession of these weapons at any time is punishable pursuant to Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code. Within the year, the person shall transfer title to the weapons by sale, gift, or other disposition. Any person who violates this paragraph is in violation of subdivision (a). The exemption provided in this subdivision does not apply to pen guns.

(9) Instruments or devices that are possessed by federal, state, and local historical societies, museums, and institutional collections which are open to the public, provided that these instruments or devices are properly housed, secured from unauthorized handling, and, if the instrument or device is a firearm, unloaded.

(10) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are possessed or utilized during the course of a motion picture, television, or video production or entertainment event 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.

(11) Instruments or devices, other than short-barreled shotguns or short-barreled rifles, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by persons who are in the business of selling instruments or devices listed in subdivision (a) solely to the entities referred to in paragraphs (9) and (10) when engaging in transactions with those entities.

(12) The sale to, possession of, or purchase of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun, by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law for use in the discharge of their official duties, or the possession of any weapon, device, or ammunition, other than a short-barreled rifle or short-barreled shotgun,

by peace officers thereof when on duty and the use is authorized by the agency and is within the course and scope of their duties.

(13) Weapons, devices, and ammunition, other than a short-barreled rifle or short-barreled shotgun, that are sold by, manufactured by, exposed or kept for sale by, possessed by, imported by, or lent by, persons who are in the business of selling weapons, devices, and ammunition listed in subdivision (a) solely to the entities referred to in paragraph (12) when engaging in transactions with those entities.

(14) The manufacture for, sale to, exposing or keeping for sale to, importation of, or lending of wooden clubs or batons to special police officers or uniformed security guards authorized to carry any wooden club or baton pursuant to Section 12002 by entities that are in the business of selling wooden batons or clubs to special police officers and uniformed security guards when engaging in transactions with those persons.

(15) Any plastic toy handgrenade, or any metal military practice handgrenade or metal replica handgrenade that is a relic, curio, memorabilia, or display item, that is filled with a permanent inert substance or that is otherwise permanently altered in a manner that prevents ready modification for use as a grenade.

(16) Any instrument, ammunition, weapon, or device listed in subdivision (a) that is not a firearm that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the instrument, ammunition, weapon, or device no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the listed item, he or she is transporting the listed item to a law enforcement agency for disposition according to law.

(17) Any firearm, other than a short-barreled rifle or short-barreled shotgun, that is found and possessed by a person who meets all of the following:

(A) The person is not prohibited from possessing firearms or ammunition pursuant to Section 12021 or 12021.1 or paragraph (1) of subdivision (b) of Section 12316 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(B) The person possessed the firearm no longer than was necessary to deliver or transport the same to a law enforcement agency for that agency's disposition according to law.

(C) If the person is transporting the firearm, he or she is transporting the firearm to a law enforcement agency for disposition according to law.

(D) Prior to transporting the firearm to a law enforcement agency, he or she has given prior notice to that law enforcement agency that he or she is transporting the firearm to that law enforcement agency for disposition according to law.

(E) The firearm is transported in a locked container as defined in subdivision (d) of Section 12026.2.

(18) The possession of any weapon, device, or ammunition, by a forensic laboratory or any authorized agent or employee thereof in the course and scope of his or her authorized activities.

(19) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine to or by any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

(20) The sale to, lending to, transfer to, purchase by, receipt of, or importation into this state of, a large-capacity magazine by a sworn peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of his or her duties.

(21) The sale or purchase of any large-capacity magazine to or by a person licensed pursuant to Section 12071.

(22) The loan of a lawfully possessed large-capacity magazine between two individuals if all of the following conditions are met:

(A) The person being loaned the large-capacity magazine is not prohibited by Section 12021, 12021.1, or 12101 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms or ammunition.

(B) The loan of the large-capacity magazine occurs at a place or location where the possession of the large-capacity magazine is not otherwise prohibited and the person who lends the large-capacity magazine remains in the accessible vicinity of the person to whom the large-capacity magazine is loaned.

(23) The importation of a large-capacity magazine by a person who lawfully possessed the large-capacity magazine in the state prior to January 1, 2000, lawfully took it out of the state, and is returning to the state with the large-capacity magazine previously lawfully possessed in the state.

(24) The lending or giving of any large-capacity magazine to a person licensed pursuant to Section 12071, or to a gunsmith, for the purposes of maintenance, repair, or modification of that large-capacity magazine.

(25) The return to its owner of any large-capacity magazine by a person specified in paragraph (24).

(26) The importation into this state of, or sale of, any large-capacity magazine by a person who has been issued a permit to engage in those activities pursuant to Section 12079, when those activities are in accordance with the terms and conditions of that permit.

(27) The sale of, giving of, lending of, importation into this state of, or purchase of, any large-capacity magazine, to or by entities that operate armored vehicle businesses pursuant to the laws of this state.

(28) The lending of large-capacity magazines by the entities specified in paragraph (27) to their authorized employees, while in the course and scope of their employment for purposes that pertain to the entity's armored vehicle business.

(29) The return of those large-capacity magazines to those entities specified in paragraph (27) by those employees specified in paragraph (28).

(30) (A) The manufacture of a large-capacity magazine for any federal, state, county, city and county, or city agency that is charged with the enforcement of any law, for use by agency employees in the discharge of their official duties whether on or off duty, and where the use is authorized by the agency and is within the course and scope of their duties.

(B) The manufacture of a large-capacity magazine for use by a sworn peace officer as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 who is authorized to carry a firearm in the course and scope of his or her duties.

(C) The manufacture of a large-capacity magazine for export or for sale to government agencies or the military pursuant to applicable federal regulations.

(31) The loan of a large-capacity magazine for use solely as a prop for a motion picture, television, or video production.

(32) The purchase of a large-capacity magazine by the holder of a special weapons permit issued pursuant to Section 12095, 12230, 12250, 12286, or 12305, for any of the following purposes:

(A) For use solely as a prop for a motion picture, television, or video production.

(B) For export pursuant to federal regulations.

(C) For resale to law enforcement agencies, government agencies, or the military, pursuant to applicable federal regulations.

(c) (1) As used in this section, a ''short-barreled shotgun'' means any of the following:

(A) A firearm which is designed or redesigned to fire a fixed shotgun shell and having a barrel or barrels of less than 18 inches in length.

(B) A firearm which has an overall length of less than 26 inches and which is designed or redesigned to fire a fixed shotgun shell.

(C) Any weapon made from a shotgun (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 18 inches in length.

(D) Any device which may be readily restored to fire a fixed shotgun shell which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, can be readily assembled if those parts are in the possession or under the control of the same person.

(2) As used in this section, a ''short-barreled rifle'' means any of the following:

(A) A rifle having a barrel or barrels of less than 16 inches in length.

(B) A rifle with an overall length of less than 26 inches.

(C) Any weapon made from a rifle (whether by alteration, modification, or otherwise) if that weapon, as modified, has an overall length of less than 26 inches or a barrel or barrels of less than 16 inches in length.

(D) Any device which may be readily restored to fire a fixed cartridge which, when so restored, is a device defined in subparagraphs (A) to (C), inclusive.

(E) Any part, or combination of parts, designed and intended to convert a device into a device defined in subparagraphs (A) to (C), inclusive, or any combination of parts from which a device defined in subparagraphs (A) to (C), inclusive, may be readily assembled if those parts are in the possession or under the control of the same person.

(3) As used in this section, a ''nunchaku'' means an instrument consisting of two or more sticks, clubs, bars or rods to be used as handles, connected by a rope, cord, wire, or chain, in the design of a weapon used in connection with the practice of a system of self-defense such as karate.

(4) As used in this section, a ''wallet gun'' means any firearm mounted or enclosed in a case, resembling a wallet, designed to be or capable of being carried in a pocket or purse, if the firearm may be fired while mounted or enclosed in the case.

(5) As used in this section, a ''cane gun'' means any firearm mounted or enclosed in a stick, staff, rod, crutch, or similar device, designed to be, or capable of being used as, an aid in walking, if the firearm may be fired while mounted or enclosed therein.

(6) As used in this section, a ''fléchette dart'' means a dart, capable of being fired from a firearm, that measures approximately one inch in

length, with tail fins that take up approximately five-sixteenths of an inch of the body.

(7) As used in this section, ''metal knuckles'' means any device or instrument made wholly or partially of metal which is worn for purposes of offense or defense in or on the hand and which either protects the wearer's hand while striking a blow or increases the force of impact from the blow or injury to the individual receiving the blow. The metal contained in the device may help support the hand or fist, provide a shield to protect it, or consist of projections or studs which would contact the individual receiving a blow.

(8) As used in this section, a ''ballistic knife'' means a device that propels a knifelike blade as a projectile by means of a coil spring, elastic material, or compressed gas. Ballistic knife does not include any device which propels an arrow or a bolt by means of any common bow, compound bow, crossbow, or underwater speargun.

(9) As used in this section, a ''camouflaging firearm container'' means a container which meets all of the following criteria:

(A) It is designed and intended to enclose a firearm.

(B) It is designed and intended to allow the firing of the enclosed firearm by external controls while the firearm is in the container.

(C) It is not readily recognizable as containing a firearm.

''Camouflaging firearm container'' does not include any camouflaging covering used while engaged in lawful hunting or while going to or returning from a lawful hunting expedition.

(10) As used in this section, a ''zip gun'' means any weapon or device which meets all of the following criteria:

(A) It was not imported as a firearm by an importer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(B) It was not originally designed to be a firearm by a manufacturer licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(C) No tax was paid on the weapon or device nor was an exemption from paying tax on that weapon or device granted under Section 4181 and Subchapters F (commencing with Section 4216) and G (commencing with Section 4221) of Chapter 32 of Title 26 of the United States Code, as amended, and the regulations issued pursuant thereto.

(D) It is made or altered to expel a projectile by the force of an explosion or other form of combustion.

(11) As used in this section, a ''shuriken'' means any instrument, without handles, consisting of a metal plate having three or more radiating points with one or more sharp edges and designed in the shape of a polygon, trefoil, cross, star, diamond, or other geometric shape for use as a weapon for throwing.

(12) As used in this section, an ''unconventional pistol'' means a firearm that does not have a rifled bore and has a barrel or barrels of less than 18 inches in length or has an overall length of less than 26 inches.

(13) As used in this section, a ''belt buckle knife'' is a knife which is made an integral part of a belt buckle and consists of a blade with a length of at least $2^1/_2$ inches.

(14) As used in this section, a ''lipstick case knife'' means a knife enclosed within and made an integral part of a lipstick case.

(15) As used in this section, a ''cane sword'' means a cane, swagger stick, stick, staff, rod, pole, umbrella, or similar device, having concealed within it a blade that may be used as a sword or stiletto.

(16) As used in this section, a ''shobi-zue'' means a staff, crutch, stick, rod, or pole concealing a knife or blade within it which may be exposed by a flip of the wrist or by a mechanical action.

(17) As used in this section, a ''leaded cane'' means a staff, crutch, stick, rod, pole, or similar device, unnaturally weighted with lead.

(18) As used in this section, an ''air gauge knife'' means a device that appears to be an air gauge but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended.

(19) As used in this section, a ''writing pen knife'' means a device that appears to be a writing pen but has concealed within it a pointed, metallic shaft that is designed to be a stabbing instrument which is exposed by mechanical action or gravity which locks into place when extended or the pointed, metallic shaft is exposed by the removal of the cap or cover on the device.

(20) As used in this section, a ''rifle'' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed cartridge to fire only a single projectile through a rifled bore for each single pull of the trigger.

(21) As used in this section, a ''shotgun'' means a weapon designed or redesigned, made or remade, and intended to be fired from the shoulder and designed or redesigned and made or remade to use the energy of the explosive in a fixed shotgun shell to fire through a smooth bore either a number of projectiles (ball shot) or a single projectile for each pull of the trigger.

(22) As used in this section, an ''undetectable firearm'' means any weapon which meets one of the following requirements:

(A) When, after removal of grips, stocks, and magazines, it is not as detectable as the Security Exemplar, by walk-through metal detectors calibrated and operated to detect the Security Exemplar.

(B) When any major component of which, when subjected to inspection by the types of X-ray machines commonly used at airports,

does not generate an image that accurately depicts the shape of the component. Barium sulfate or other compounds may be used in the fabrication of the component.

(C) For purposes of this paragraph, the terms ''firearm,'' ''major component,'' and ''Security Exemplar'' have the same meanings as those terms are defined in Section 922 of Title 18 of the United States Code.

All firearm detection equipment newly installed in nonfederal public buildings in this state shall be of a type identified by either the United States Attorney General, the Secretary of Transportation, or the Secretary of the Treasury, as appropriate, as available state-of-the-art equipment capable of detecting an undetectable firearm, as defined, while distinguishing innocuous metal objects likely to be carried on one's person sufficient for reasonable passage of the public.

(23) As used in this section, a ''multiburst trigger activator'' means one of the following devices:

(A) A device designed or redesigned to be attached to a semiautomatic firearm which allows the firearm to discharge two or more shots in a burst by activating the device.

(B) A manual or power-driven trigger activating device constructed and designed so that when attached to a semiautomatic firearm it increases the rate of fire of that firearm.

(24) As used in this section, a ''dirk'' or ''dagger'' means a knife or other instrument with or without a handguard that is capable of ready use as a stabbing weapon that may inflict great bodily injury or death. A nonlocking folding knife, a folding knife that is not prohibited by Section 653k, or a pocketknife is capable of ready use as a stabbing weapon that may inflict great bodily injury or death only if the blade of the knife is exposed and locked into position.

(25) As used in this section, ''large-capacity magazine'' means any ammunition feeding device with the capacity to accept more than 10 rounds, but shall not be construed to include any of the following:

(A) A feeding device that has been permanently altered so that it cannot accommodate more than 10 rounds.

(B) A .22 caliber tube ammunition feeding device.

(C) A tubular magazine that is contained in a lever-action firearm.

(d) Knives carried in sheaths which are worn openly suspended from the waist of the wearer are not concealed within the meaning of this section.

SEC. 8. Section 12026.2 of the Penal Code is amended to read:

12026.2. (a) Section 12025 does not apply to, or affect, any of the following:

(1) The possession of a firearm by an authorized participant in a motion picture, television, or video production or entertainment event

when the participant lawfully uses the firearm as part of that production or event or while going directly to, or coming directly from, that production or event.

(2) The possession of a firearm in a locked container by a member of any club or organization, organized for the purpose of lawfully collecting and lawfully displaying pistols, revolvers, or other firearms, while the member is at meetings of the clubs or organizations or while going directly to, and coming directly from, those meetings.

(3) The transportation of a firearm by a participant when going directly to, or coming directly from, a recognized safety or hunter safety class, or a recognized sporting event involving that firearm.

(4) The transportation of a firearm by a person listed in Section 12026 directly between any of the places mentioned in Section 12026.

(5) The transportation of a firearm by a person when going directly to, or coming directly from, a fixed place of business or private residential property for the purpose of the lawful repair or the lawful transfer, sale, or loan of that firearm.

(6) The transportation of a firearm by a person listed in Section 12026 when going directly from the place where that person lawfully received that firearm to that person's place of residence or place of business or to private property owned or lawfully possessed by that person.

(7) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show, swap meet, or similar event to which the public is invited, for the purpose of displaying that firearm in a lawful manner.

(8) The transportation of a firearm by an authorized employee or agent of a supplier of firearms when going directly to, or coming directly from, a motion picture, television, or video production or entertainment event for the purpose of providing that firearm to an authorized participant to lawfully use as a part of that production or event.

(9) The transportation of a firearm by a person when going directly to, or coming directly from, a target range, which holds a regulatory or business license, for the purposes of practicing shooting at targets with that firearm at that target range.

(10) The transportation of a firearm by a person when going directly to, or coming directly from, a place designated by a person authorized to issue licenses pursuant to Section 12050 when done at the request of the issuing agency so that the issuing agency can determine whether or not a license should be issued to that person to carry that firearm.

(11) The transportation of a firearm by a person when going directly to, or coming directly from, a law enforcement agency for the purpose of a lawful transfer, sale, or loan of that firearm pursuant to Section 12084.

(12) The transportation of a firearm by a person when going directly to, or coming directly from, a lawful camping activity for the purpose of having that firearm available for lawful personal protection while at the lawful campsite. This paragraph shall not be construed to override the statutory authority granted to the Department of Parks and Recreation or any other state or local governmental agencies to promulgate rules and regulations governing the administration of parks and campgrounds.

(13) The transportation of a firearm by a person in order to comply with subdivision (c) or (i) of Section 12078 as it pertains to that firearm.

(14) The transportation of a firearm by a person in order to utilize subdivision (*l*) of Section 12078 as it pertains to that firearm.

(15) The transportation of a firearm by a person when going directly to, or coming directly from, a gun show or event, as defined in Section 478.100 of Title 27 of the Code of Federal Regulations, for the purpose of lawfully transferring, selling, or loaning that firearm in accordance with subdivision (d) of Section 12072.

(16) The transportation of a firearm by a person in order to utilize paragraph (3) of subdivision (a) of Section 12078 as it pertains to that firearm.

(17) The transportation of a firearm by a person who finds the firearm in order to comply with Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code as it pertains to that firearm and if that firearm is being transported to a law enforcement agency, the person gives prior notice to the law enforcement agency that he or she is transporting the firearm to the law enforcement agency.

(18) The transportation of a firearm by a person who finds the firearm and is transporting it to a law enforcement agency for disposition according to law, if he or she gives 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.

(19) The transportation of a firearm by a person in order to comply with paragraph (2) of subdivision (f) of Section 12072 as it pertains to that firearm.

(20) The transportation of a firearm by a person in order to comply with paragraph (3) of subdivision (f) of Section 12072 as it pertains to that firearm.

(21) The transportation of a firearm by a person for the purpose of obtaining an identification number or mark assigned for that firearm from the Department of Justice pursuant to Section 12092.

(b) In order for a firearm to be exempted under subdivision (a), while being transported to or from a place, the firearm shall be unloaded, kept in a locked container, as defined in subdivision (d), and the course of

travel shall include only those deviations between authorized locations as are reasonably necessary under the circumstances.

(c) This section does not prohibit or limit the otherwise lawful carrying or transportation of any pistol, revolver, or other firearm capable of being concealed upon the person in accordance with this chapter.

(d) As used in this section, ''locked container'' means a secure container which is fully enclosed and locked by a padlock, keylock, combination lock, or similar locking device. The term ''locked container'' does not include the utility or glove compartment of a motor vehicle.

SEC. 9. Section 12070 of the Penal Code is amended to read:

12070. (a) No person shall sell, lease, or transfer firearms unless he or she has been issued a license pursuant to Section 12071. Any person violating this section is guilty of a misdemeanor.

(b) Subdivision (a) does not include any of the following:

(1) The sale, lease, or transfer of any firearm by a person acting pursuant to operation of law, a court order, or pursuant to the Enforcement of Judgments Law (Title 9 (commencing with Section 680.010) of Part 2 of the Code of Civil Procedure), or by a person who liquidates a personal firearm collection to satisfy a court judgment.

(2) A person acting pursuant to subdivision (e) of Section 186.22a or subdivision (c) of Section 12028.

(3) The sale, lease, or transfer of a firearm by a person who obtains title to the firearm by intestate succession or by bequest or as a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code, provided the person disposes of the firearm within 60 days of receipt of the firearm.

(4) The infrequent sale, lease, or transfer of firearms.

(5) The sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, at gun shows or events, as specified in subparagraph (B) of paragraph (1) of subdivision (b) of Section 12071, by a person other than a licensee or dealer, provided the person has a valid federal firearms license and a current certificate of eligibility issued by the Department of Justice, as specified in Section 12071, and provided all the sales, leases, or transfers fully comply with subdivision (d) of Section 12072. However, the person shall not engage in the sale, lease, or transfer of used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at more than 12 gun shows or events in any calendar year and shall not sell, lease, or transfer more than 15 used firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person at any single gun show or event. In no event shall the person sell more than 75 used firearms other than pistols,

revolvers, or other firearms capable of being concealed upon the person in any calendar year.

A person described in this paragraph shall be known as a ''Gun Show Trader.''

The Department of Justice shall adopt regulations to administer this program and shall recover the full costs of administration from fees assessed applicants.

As used in this paragraph, the term ''used firearm'' means a firearm that has been sold previously at retail and is more than three years old.

(6) The activities of a law enforcement agency pursuant to Section 12084.

(7) Deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(8) The sale, delivery, or transfer of firearms by manufacturers or importers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers or wholesalers.

(9) Deliveries and transfers of firearms made pursuant to Section 12028, 12028.5, or 12030.

(10) The loan of a firearm for the purposes of shooting at targets, if the loan occurs on the premises of a target facility which holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(11) Sales, deliveries, or transfers of firearms by manufacturers, importers, or wholesalers licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(12) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed outside this state pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to wholesalers, manufacturers, or importers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(13) Sales, deliveries, or transfers of firearms by wholesalers to dealers.

(14) Sales, deliveries, or transfers of firearms by persons who reside outside this state to persons licensed pursuant to Section 12071, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code, and the regulations issued pursuant thereto.

(15) Sales, deliveries, or transfers of firearms by persons who reside outside this state and are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto to dealers, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(16) The delivery, sale, or transfer of an unloaded firearm by one wholesaler to another wholesaler if that firearm is intended as merchandise in the receiving wholesaler's business.

(17) The loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges for use solely as a prop for a motion picture, television, or video production or entertainment or theatrical event.

(18) The delivery of an unloaded firearm that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, by a person licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto with a current certificate of eligibility issued pursuant to Section 12071 to a dealer.

(c) (1) As used in this section, ''infrequent'' means:

(A) For pistols, revolvers, and other firearms capable of being concealed upon the person, less than six transactions per calendar year. For this purpose, ''transaction'' means a single sale, lease, or transfer of any number of pistols, revolvers, or other firearms capable of being concealed upon the person.

(B) For firearms other than pistols, revolvers, or other firearms capable of being concealed upon the person, occasional and without regularity.

(2) As used in this section, ''operation of law'' includes, but is not limited to, any of the following:

(A) The executor or administrator of an estate, if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver, if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties, if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property between spouses pursuant to Section 850 of the Family Code.

(H) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(I) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

SEC. 10. Section 12071 of the Penal Code is amended to read:

12071. (a) (1) As used in this chapter, the term ''licensee,'' ''person licensed pursuant to Section 12071,'' or ''dealer'' means a person who has all of the following:

(A) A valid federal firearms license.

(B) Any regulatory or business license, or licenses, required by local government.

(C) A valid seller's permit issued by the State Board of Equalization.

(D) A certificate of eligibility issued by the Department of Justice pursuant to paragraph (4).

(E) A license issued in the format prescribed by paragraph (6).

(F) Is among those recorded in the centralized list specified in subdivision (e).

(2) The duly constituted licensing authority of a city, county, or a city and county shall accept applications for, and may grant licenses permitting, licensees to sell firearms at retail within the city, county, or city and county. The duly constituted licensing authority shall inform applicants who are denied licenses of the reasons for the denial in writing.

(3) No license shall be granted to any applicant who fails to provide a copy of his or her valid federal firearms license, valid seller's permit issued by the State Board of Equalization, and the certificate of eligibility described in paragraph (4).

(4) A person may request a certificate of eligibility from the Department of Justice and the Department of Justice shall issue a certificate to an applicant if the department's records indicate that the applicant is not a person who is prohibited from possessing firearms.

(5) The department shall adopt regulations to administer the certificate of eligibility program and shall recover the full costs of

administering the program by imposing fees assessed to applicants who apply for those certificates.

(6) A license granted by the duly constituted licensing authority of any city, county, or city and county, shall be valid for not more than one year from the date of issuance and shall be in one of the following forms:

(A) In the form prescribed by the Attorney General.

(B) A regulatory or business license that states on its face ''Valid for Retail Sales of Firearms'' and is endorsed by the signature of the issuing authority.

(C) A letter from the duly constituted licensing authority having primary jurisdiction for the applicant's intended business location stating that the jurisdiction does not require any form of regulatory or business license or does not otherwise restrict or regulate the sale of firearms.

(7) Local licensing authorities may assess fees to recover their full costs of processing applications for licenses.

(b) A license is subject to forfeiture for a breach of any of the following prohibitions and requirements:

(1) (A) Except as provided in subparagraphs (B) and (C), the business shall be conducted only in the buildings designated in the license.

(B) A person licensed pursuant to subdivision (a) may take possession of firearms and commence preparation of registers for the sale, delivery, or transfer of firearms at gun shows or events, as defined in Section 478.100 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 478.102 (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 five 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 six inches wide measured in any direction.

(E) Any metal screens have spaces no larger than three inches wide measured in any direction.

(F) All steel bars shall be no further than six inches apart.

(3) As used in this section, ''licensed premises,'' ''licensed place of business,'' ''licensee's place of business,'' or ''licensee's business premises'' means the building designated in the license.

(4) For purposes of paragraph (17) of subdivision (b):

(A) A ''firearms transaction record'' is a record containing the same information referred to in subdivision (a) of Section 478.124, Section 478.124a, and subdivision (e) of Section 478.125 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 478.124a and subdivision (e) of Section 478.125 of Title 27 of the Code of Federal Regulations and the records referred to in subdivision (a) of Section 478.124 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 478.100 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. 11. Section 12072 of the Penal Code is amended to read:

12072. (a) (1) No person, corporation, or firm shall knowingly supply, deliver, sell, or give possession or control of a firearm to any person within any of the classes prohibited by Section 12021 or 12021.1.

(2) No person, corporation, or dealer shall sell, supply, deliver, or give possession or control of a firearm to any person whom he or she has cause to believe to be within any of the classes prohibited by Section

12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(3) (A) No person, corporation, or firm shall sell, loan, or transfer a firearm to a minor, nor sell a handgun to an individual under 21 years of age.

(B) Subparagraph (A) shall not apply to or affect those circumstances set forth in subdivision (p) of Section 12078.

(4) No person, corporation, or dealer shall sell, loan, or transfer a firearm to any person whom he or she knows or has cause to believe is not the actual purchaser or transferee of the firearm, or to any person who is not the person actually being loaned the firearm, if the person, corporation, or dealer has either of the following:

(A) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the provisions of subdivision (c) or (d).

(B) Knowledge that the firearm is to be subsequently loaned, sold, or transferred to avoid the requirements of any exemption to the provisions of subdivision (c) or (d).

(5) No person, corporation, or dealer shall acquire a firearm for the purpose of selling, transferring, or loaning the firearm, if the person, corporation, or dealer has either of the following:

(A) In the case of a dealer, intent to violate subdivision (b) or (c).

(B) In any other case, intent to avoid either of the following:

(i) The provisions of subdivision (d).

(ii) The requirements of any exemption to the provisions of subdivision (d).

(6) The dealer shall comply with the provisions of paragraph (18) of subdivision (b) of Section 12071.

(7) The dealer shall comply with the provisions of paragraph (19) of subdivision (b) of Section 12071.

(8) No person shall sell or otherwise transfer his or her ownership in a pistol, revolver, or other firearm capable of being concealed upon the person unless the firearm bears either:

(A) The name of the manufacturer, the manufacturer's make or model, and a manufacturer's serial number assigned to that firearm.

(B) The identification number or mark assigned to the firearm by the Department of Justice pursuant to Section 12092.

(9) (A) No person shall make an application to purchase more than one pistol, revolver, or other firearm capable of being concealed upon the person within any 30-day period.

(B) Subparagraph (A) shall not apply to any of the following:

(i) Any law enforcement agency.

(ii) Any agency duly authorized to perform law enforcement duties.

(iii) Any state or local correctional facility.

(iv) Any private security company licensed to do business in California.

(v) Any person who is properly identified as a full-time paid peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, and who is authorized to, and does carry a firearm during the course and scope of his or her employment as a peace officer.

(vi) Any motion picture, television, or video production company or entertainment or theatrical company whose production by its nature involves the use of a firearm.

(vii) Any person who may, pursuant to Section 12078, claim an exemption from the waiting period set forth in subdivision (c) of this section.

(viii) Any transaction conducted through a licensed firearms dealer pursuant to Section 12082.

(ix) Any transaction conducted through a law enforcement agency pursuant to Section 12084.

(x) Any person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto and who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071.

(xi) The exchange of a pistol, revolver, or other firearm capable of being concealed upon the person where the dealer purchased that firearm from the person seeking the exchange within the 30-day period immediately preceding the date of exchange or replacement.

(xii) The replacement of a pistol, revolver, or other firearm capable of being concealed upon the person when the person's pistol, revolver, or other firearm capable of being concealed upon the person was lost or stolen, and the person reported that firearm lost or stolen prior to the completion of the application to purchase to any local law enforcement agency of the city, county, or city and county in which he or she resides.

(xiii) The return of any pistol, revolver, or other firearm capable of being concealed upon the person to its owner.

(b) No person licensed under Section 12071 shall supply, sell, deliver, or give possession or control of a pistol, revolver, or firearm capable of being concealed upon the person to any person under the age of 21 years or any other firearm to a person under the age of 18 years.

(c) No dealer, whether or not acting pursuant to Section 12082, shall deliver a firearm to a person, as follows:

(1) Within 10 days of the application to purchase, or, after notice by the department pursuant to subdivision (d) of Section 12076, within 10 days of the submission to the department of any correction to the application, or within 10 days of the submission to the department of any

fee required pursuant to subdivision (e) of Section 12076, whichever is later.

(2) Unless unloaded and securely wrapped or unloaded and in a locked container.

(3) Unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of his or her identity and age, as defined in Section 12071, to the dealer.

(4) Whenever the dealer is notified by the Department of Justice that the person is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(5) (A) Commencing April 1, 1994, and until January 1, 2003, no pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered unless the purchaser, transferee, or person being loaned the firearm presents to the dealer a basic firearms safety certificate.

(B) Commencing January 1, 2003, no handgun shall be delivered unless the purchaser, transferee, or person being loaned the handgun presents a handgun safety certificate to the dealer.

(6) No pistol, revolver, or other firearm capable of being concealed upon the person shall be delivered whenever the dealer is notified by the Department of Justice that within the preceding 30-day period the purchaser has made another application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person and that the previous application to purchase involved none of the entities specified in subparagraph (B) of paragraph (9) of subdivision (a).

(d) Where neither party to the transaction holds a dealer's license issued pursuant to Section 12071, the parties to the transaction shall complete the sale, loan, or transfer of that firearm through either of the following:

(1) A licensed firearms dealer pursuant to Section 12082.

(2) A law enforcement agency pursuant to Section 12084.

(e) No person may commit an act of collusion relating to Article 8 (commencing with Section 12800) of Chapter 6. For purposes of this section and Section 12071, collusion may be proven by any one of the following factors:

(1) Answering a test applicant's questions during an objective test relating to firearms safety.

(2) Knowingly grading the examination falsely.

(3) Providing an advance copy of the test to an applicant.

(4) Taking or allowing another person to take the basic firearms safety course for one who is the applicant for a basic firearms safety certificate or a handgun safety certificate.

(5) Allowing another to take the objective test for the applicant, purchaser, or transferee.

(6) Using or allowing another to use one's identification, proof of residency, or thumbprint.

(7) Allowing others to give unauthorized assistance during the examination.

(8) Reference to unauthorized materials during the examination and cheating by the applicant.

(9) Providing originals or photocopies of the objective test, or any version thereof, to any person other than as authorized by the department.

(f) (1) No person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code shall deliver, sell, or transfer a firearm to a person who is licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and whose licensed premises are located in this state unless:

(A) Prior to January 1, 2005, the intended recipient does one of the following:

(i) Presents proof of licensure pursuant to Section 12071 to that person.

(ii) Presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(B) Commencing January 1, 2005, one of the following is satisfied:

(i) The person intending to deliver, sell, or transfer the firearms obtains from the department, prior to delivery, a unique verification number pursuant to subdivision (i) of Section 12071. The person intending to deliver, sell, or transfer firearms shall provide the unique verification number to the recipient along with the firearms upon delivery, in a manner to be determined by the department.

(ii) The intended recipient presents proof that he or she is exempt from licensure under Section 12071 to that person, in which case the person also shall present proof that the transaction is also exempt from the provisions of subdivision (d).

(2) (A) On or after January 1, 1998, within 60 days of bringing a pistol, revolver, or other firearm capable of being concealed upon the person into this state, a personal handgun importer shall do one of the following:

(i) Forward by prepaid mail or deliver in person to the Department of Justice, a report prescribed by the department including information concerning that individual and a description of the firearm in question.

(ii) Sell or transfer the firearm in accordance with the provisions of subdivision (d) or in accordance with the provisions of an exemption from subdivision (d).

(iii) Sell or transfer the firearm to a dealer licensed pursuant to Section 12071.

(iv) Sell or transfer the firearm to a sheriff or police department.

(B) If the personal handgun importer sells or transfers the pistol, revolver, or other firearm capable of being concealed upon the person pursuant to subdivision (d) of Section 12072 and the sale or transfer cannot be completed by the dealer to the purchaser or transferee, and the firearm can be returned to the personal handgun importer, the personal handgun importer shall have complied with the provisions of this paragraph.

(C) The provisions of this paragraph are cumulative and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and different provisions of the Penal Code shall not be punished under more than one provision.

(D) (i) On and after January 1, 1998, the department shall conduct a public education and notification program regarding this paragraph to ensure a high degree of publicity of the provisions of this paragraph.

(ii) As part of the public education and notification program described in this subparagraph, the department shall do all of the following:

(I) Work in conjunction with the Department of Motor Vehicles to ensure that any person who is subject to this paragraph is advised of the provisions of this paragraph, and provided with blank copies of the report described in clause (i) of subparagraph (A) at the time that person applies for a California driver's license or registers his or her motor vehicle in accordance with the Vehicle Code.

(II) Make the reports referred to in clause (i) of subparagraph (A) available to dealers licensed pursuant to Section 12071.

(III) Make the reports referred to in clause (i) of subparagraph (A) available to law enforcement agencies.

(IV) Make persons subject to the provisions of this paragraph aware of the fact that reports referred to in clause (i) of subparagraph (A) may be completed at either the licensed premises of dealers licensed pursuant to Section 12071 or at law enforcement agencies, that it is advisable to do so for the sake of accuracy and completeness of the reports, that prior to transporting a pistol, revolver, or other firearm capable of being concealed upon the person to a law enforcement agency in order to comply with subparagraph (A), the person should give prior notice to the law enforcement agency that he or she is doing so, and that in any event,

the pistol, revolver, or other firearm capable of being concealed upon the person should be transported unloaded and in a locked container.

(iii) Any costs incurred by the department to implement this paragraph shall be absorbed by the department within its existing budget and the fees in the Dealers' Record of Sale Special Account allocated for implementation of this subparagraph pursuant to Section 12076.

(3) Where a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, whose licensed premises are within this state, acquires a pistol, revolver, or other firearm capable of being concealed upon the person that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, outside of this state, takes actual possession of that firearm outside of this state pursuant to the provisions of subsection (j) of Section 923 of Title 18 of the United States Code, as amended by Public Law 104-208, and transports that firearm into this state, within five days of that licensed collector transporting that firearm into this state, he or she shall report to the department in a format prescribed by the department his or her acquisition of that firearm.

(4) (A) It is the intent of the Legislature that a violation of paragraph (2) or (3) shall not constitute a ''continuing offense'' and the statute of limitations for commencing a prosecution for a violation of paragraph (2) or (3) commences on the date that the applicable grace period specified in paragraph (2) or (3) expires.

(B) Paragraphs (2) and (3) shall not apply to a person who reports his or her ownership of a pistol, revolver, or other firearm capable of being concealed upon the person after the applicable grace period specified in paragraph (2) or (3) expires if evidence of that violation arises only as the result of the person submitting the report described in paragraph (2) or (3).

(g) (1) Except as provided in paragraph (2), (3), or (5), a violation of this section is a misdemeanor.

(2) If any of the following circumstances apply, a violation of this section is punishable by imprisonment in the state prison for two, three, or four years.

(A) If the violation is of paragraph (1) of subdivision (a).

(B) If the defendant has a prior conviction of violating the provisions, other than paragraph (9) of subdivision (a), of this section or former Section 12100 of this code or Section 8101 of the Welfare and Institutions Code.

(C) If the defendant has a prior conviction of violating any offense specified in subdivision (b) of Section 12021.1 or of a violation of Section 12020, 12220, or 12520, or of former Section 12560.

(D) If the defendant is in a prohibited class described in Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code.

(E) A violation of this section by a person who actively participates in a ''criminal street gang'' as defined in Section 186.22.

(F) A violation of subdivision (b) involving the delivery of any firearm to a person who the dealer knows, or should know, is a minor.

(3) If any of the following circumstances apply, a violation of this section shall be punished by imprisonment in a county jail not exceeding one year or in the state prison, or by a fine not to exceed one thousand dollars ($1,000), or by both that fine and imprisonment.

(A) A violation of paragraph (2), (4), or (5) of subdivision (a).

(B) A violation of paragraph (3) of subdivision (a) involving the sale, loan, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor.

(C) A violation of subdivision (b) involving the delivery of a pistol, revolver, or other firearm capable of being concealed upon the person.

(D) A violation of paragraph (1), (3), (4), (5), or (6) of subdivision (c) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(E) A violation of subdivision (d) involving a pistol, revolver, or other firearm capable of being concealed upon the person.

(F) A violation of subdivision (e).

(4) If both of the following circumstances apply, an additional term of imprisonment in the state prison for one, two, or three years shall be imposed in addition and consecutive to the sentence prescribed.

(A) A violation of paragraph (2) of subdivision (a) or subdivision (b).

(B) The firearm transferred in violation of paragraph (2) of subdivision (a) or subdivision (b) is used in the subsequent commission of a felony for which a conviction is obtained and the prescribed sentence is imposed.

(5) (A) A first violation of paragraph (9) of subdivision (a) is an infraction punishable by a fine of fifty dollars ($50).

(B) A second violation of paragraph (9) of subdivision (a) is an infraction punishable by a fine of one hundred dollars ($100).

(C) A third or subsequent violation of paragraph (9) of subdivision (a) is a misdemeanor.

(D) For purposes of this paragraph each application to purchase a pistol, revolver, or other firearm capable of being concealed upon the person in violation of paragraph (9) of subdivision (a) shall be deemed a separate offense.

SEC. 12. Section 12078 of the Penal Code is amended to read:

12078. (a) (1) The waiting periods described in Sections 12071, 12072, and 12084 shall not apply to deliveries, transfers, or sales of

firearms made to persons properly identified as full-time paid peace officers as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2, provided that the peace officers are authorized by their employer to carry firearms while in the performance of their duties. Proper identification is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the purchaser or transferee as a peace officer who is authorized to carry firearms while in the performance of his or her duties, and authorizing the purchase or transfer. The certification shall be delivered to the dealer or local law enforcement agency acting pursuant to Section 12084 at the time of purchase or transfer and the purchaser or transferee shall identify himself or herself as the person authorized in the certification. The dealer or local law enforcement agency shall keep the certification with the record of sale, or LEFT, as the case may be. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084 shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) or (c) of Section 12077 or Section 12084. If electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to deliveries, transfers, or sales of firearms made to authorized law enforcement representatives of cities, counties, cities and counties, or state or federal governments for exclusive use by those governmental agencies if, prior to the delivery, transfer, or sale of these firearms, written authorization from the head of the agency authorizing the transaction is presented to the person from whom the purchase, delivery, or transfer is being made. Proper written authorization is defined as verifiable written certification from the head of the agency by which the purchaser or transferee is employed, identifying the employee as an individual authorized to conduct the transaction, and authorizing the transaction for the exclusive use of the agency by which he or she is employed. Within 10 days of the date a pistol, revolver, or other firearm capable of being concealed upon the person is acquired by the agency, a record of the same shall be entered as an institutional weapon into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(3) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to the loan of a firearm made by an authorized law enforcement representative of a city, county, or city and county, or the state or federal government to a peace officer employed by that agency and authorized to carry a firearm for the carrying and use of that firearm by that peace officer in the course and scope of his or her duties.

(4) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a peace officer pursuant to Section 10334 of the Public Contract Code. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred pursuant to Section 10334 of the Public Contract Code to that peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(5) Subdivision (b) of Section 12801 and the preceding provisions of this article do not apply to the delivery, sale, or transfer of a firearm by a law enforcement agency to a retiring peace officer who is authorized to carry a firearm pursuant to Section 12027.1. Within 10 days of the date that a pistol, revolver, or other firearm capable of being concealed upon the person is sold, delivered, or transferred to that retiring peace officer, the name of the officer and the make, model, serial number, and other identifying characteristics of the firearm being sold, transferred, or delivered shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state agency that sold, transferred, or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(6) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 do not apply to sales, deliveries, or transfers of firearms to authorized representatives of cities, cities and counties, counties, or state or federal governments for those governmental agencies where the entity is acquiring the weapon as part of an authorized, voluntary program where the entity is buying or receiving weapons from private individuals. Any weapons acquired pursuant to this paragraph shall be disposed of pursuant to the applicable provisions of Section 12028 or 12032.

(7) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the sale, loan, delivery, or transfer of a firearm made by an authorized law enforcement representative of a city, county, city and county, state, or the federal government to any public or private nonprofit historical society, museum, or institutional collection or the purchase or receipt of that firearm by that public or private nonprofit historical society, museum, or institutional collection if all of the following conditions are met:

(A) The entity receiving the firearm is open to the public.

(B) The firearm prior to delivery is deactivated or rendered inoperable.

(C) The firearm is not subject to Section 12028, 12028.5, 12030, or 12032.

(D) The firearm is not prohibited by other provisions of law from being sold, delivered, or transferred to the public at large.

(E) Prior to delivery, the entity receiving the firearm submits a written statement to the law enforcement representative stating that the firearm will not be restored to operating condition, and will either remain with that entity, or if subsequently disposed of, will be transferred in accordance with the applicable provisions of this article and, if applicable, Section 12801.

(F) Within 10 days of the date that the firearm is sold, loaned, delivered, or transferred to that entity, the name of the government entity delivering the firearm, and the make, model, serial number, and other identifying characteristics of the firearm and the name of the person authorized by the entity to take possession of the firearm shall be reported to the department in a manner prescribed by the department.

(G) In the event of a change in the status of the designated representative, the entity shall notify the department of a new representative within 30 days.

(8) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the sale, loan, delivery, or transfer of a firearm made by any person other than a representative of an authorized law enforcement agency to any public or private nonprofit historical society, museum, or institutional collection if all of the following conditions are met:

(A) The entity receiving the firearm is open to the public.

(B) The firearm is deactivated or rendered inoperable prior to delivery.

(C) The firearm is not of a type prohibited from being sold, delivered, or transferred to the public.

(D) Prior to delivery, the entity receiving the firearm submits a written statement to the person selling, loaning, or transferring the firearm stating that the firearm will not be restored to operating

condition, and will either remain with that entity, or if subsequently disposed of, will be transferred in accordance with the applicable, provisions of this article and, if applicable Section 12801.

(E) If title to a handgun is being transferred to the public or private nonprofit historical society, museum, or institutional collection, then the designated representative of that public or private historical society, museum or institutional collection within 30 days of taking possession of that handgun, shall forward by prepaid mail or deliver in person to the Department of Justice, a single report signed by both parties to the transaction, that includes information identifying the person representing that public or private historical society, museum, or institutional collection, how title was obtained and from whom, and a description of the firearm in question, along with a copy of the written statement referred to in subparagraph (D). The report forms that are to be completed pursuant to this paragraph shall be provided by the Department of Justice.

(F) In the event of a change in the status of the designated representative, the entity shall notify the department of a new representative within 30 days.

(b) (1) Section 12071, subdivisions (c) and (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to deliveries, sales, or transfers of firearms between or to importers and manufacturers of firearms licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(2) Subdivision (b) of Section 12801 shall not apply to the delivery, sale, or transfer of a handgun to a person licensed pursuant to Section 12071, where the licensee is receiving the handgun in the course and scope of his or her activities as a person licensed pursuant to Section 12071.

(c) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by gift, bequest, intestate succession, or other means by one individual to another if both individuals are members of the same immediate family and both of the following conditions are met:

(A) The person to whom the firearm is transferred shall, within 30 days of taking possession of the firearm, forward by prepaid mail or deliver in person to the Department of Justice, a report that includes information concerning the individual taking possession of the firearm,

how title was obtained and from whom, and a description of the firearm in question. The report forms that individuals complete pursuant to this paragraph shall be provided to them by the Department of Justice.

(B) If taking possession of the firearm prior to January 1, 2003, the person taking title to the firearm shall first obtain a basic firearms safety certificate. If taking possession on or after January 1, 2003, the person taking title to the firearm shall first obtain a handgun safety certificate.

(3) As used in this subdivision, ''immediate family member'' means any one of the following relationships:

(A) Parent and child.

(B) Grandparent and grandchild.

(d) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent loan of firearms between persons who are personally known to each other for any lawful purpose, if the loan does not exceed 30 days in duration and, when the firearm is a handgun, commencing January 1, 2003, the individual being loaned the handgun has a valid handgun safety certificate.

(2) Subdivision (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the loan of a firearm where all of the following conditions exist:

(A) The person loaning the firearm is at all times within the presence of the person being loaned the firearm.

(B) The loan is for a lawful purpose.

(C) The loan does not exceed three days in duration.

(D) The individual receiving the firearm is not prohibited from owning or possessing a firearm pursuant to Section 12021 or 12021.1 of this code, or by Section 8100 or 8103 of the Welfare and Institutions Code.

(E) The person loaning the firearm is 18 years of age or older.

(F) The person being loaned the firearm is 18 years of age or older.

(e) Section 12071, subdivisions (c) and (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the delivery of a firearm to a gunsmith for service or repair, or to the return of the firearm to its owner by the gunsmith.

(f) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the sale, delivery, or transfer of firearms by persons who reside in this state to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, if the sale, delivery, or transfer is in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(g) (1) Subdivision (d) of Section 12072 shall not apply to the infrequent sale or transfer of a firearm, other than a pistol, revolver, or

other firearm capable of being concealed upon the person, at auctions or similar events conducted by nonprofit mutual or public benefit corporations organized pursuant to the Corporations Code.

As used in this paragraph, the term ''infrequent'' shall not be construed to prohibit different local chapters of the same nonprofit corporation from conducting auctions or similar events, provided the individual local chapter conducts the auctions or similar events infrequently. It is the intent of the Legislature that different local chapters, representing different localities, be entitled to invoke the exemption created by this paragraph, notwithstanding the frequency with which other chapters of the same nonprofit corporation may conduct auctions or similar events.

(2) Subdivision (d) of Section 12072 shall not apply to the transfer of a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, if the firearm is donated for an auction or similar event described in paragraph (1) and the firearm is delivered to the nonprofit corporation immediately preceding, or contemporaneous with, the auction or similar event.

(3) The waiting period described in Sections 12071 and 12072 shall not apply to a dealer who delivers a firearm other than a pistol, revolver, or other firearm capable of being concealed upon the person, at an auction or similar event described in paragraph (1), as authorized by subparagraph (C) of paragraph (1) of subdivision (b) of Section 12071. Within two business days of completion of the application to purchase, the dealer shall forward by prepaid mail to the Department of Justice a report of the same as is indicated in subdivision (c) of Section 12077. If the electronic or telephonic transfer of applicant information is used, within two business days of completion of the application to purchase, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (c) of Section 12077.

(h) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the loan of a firearm to a person 18 years of age or older for the purposes of shooting at targets if the loan occurs on the premises of a target facility that holds a business or regulatory license or on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(i) (1) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this

code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms.

(2) Subdivision (d) of Section 12072 shall not apply to a person who takes title or possession of a pistol, revolver, or other firearm capable of being concealed upon the person by operation of law if the person is not prohibited by Section 12021 or 12021.1 of this code or Section 8100 or 8103 of the Welfare and Institutions Code from possessing firearms and all of the following conditions are met:

(A) If the person taking title or possession is neither a levying officer as defined in Section 481.140, 511.060, or 680.210 of the Code of Civil Procedure, nor a person who is receiving that firearm pursuant to subparagraph (G), (I), or (J) of paragraph (2) of subdivision (u), the person shall, within 30 days of taking possession, forward by prepaid mail or deliver in person to the Department of Justice, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(B) If the person taking title or possession is receiving the firearm pursuant to subparagraph (G) of paragraph (2) of subdivision (u), the person shall do both of the following:

(i) Within 30 days of taking possession, forward by prepaid mail or deliver in person to the department, a report of information concerning the individual taking possession of the firearm, how title or possession was obtained and from whom, and a description of the firearm in question. The reports that individuals complete pursuant to this paragraph shall be provided to them by the department.

(ii) Prior to taking title or possession of the firearm, if title or possession is taken prior to January 1, 2003, the person shall either obtain a basic firearms safety certificate or be exempt from obtaining a basic firearms safety certificate pursuant to Section 12081. Prior to taking title or possession of the firearm, if title or possession is taken on or after January 1, 2003, the person shall obtain a handgun safety certificate.

(C) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (I) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the Automated Firearms System (AFS) via the California Law Enforcement Telecommunications System (CLETS) by the law enforcement or state

agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system.

(D) Where the person receiving title or possession of the pistol, revolver, or other firearm capable of being concealed upon the person is a person described in subparagraph (J) of paragraph (2) of subdivision (u), on the date that the person is delivered the firearm, the name and other information concerning the person taking possession of the firearm, how title or possession of the firearm was obtained and from whom, and a description of the firearm by make, model, serial number, and other identifying characteristics, shall be entered into the AFS via the CLETS by the law enforcement or state agency that transferred or delivered the firearm. Those agencies without access to AFS shall arrange with the sheriff of the county in which the agency is located to input this information via this system. In addition, that law enforcement agency shall not deliver that pistol, revolver, or other firearm capable of being concealed upon the person to the person referred to in this subparagraph if delivery takes place prior to January 1, 2003, unless, prior to the delivery of the same, the person presents proof to the agency that he or she is the holder of a basic firearms safety certificate or is exempt from obtaining a basic firearms safety certificate pursuant to Section 12081, or, commencing January 1, 2003, is the holder of a handgun safety certificate.

(3) Subdivision (d) of Section 12072 shall not apply to a person who takes possession of a firearm by operation of law in a representative capacity who subsequently transfers ownership of the firearm to himself or herself in his or her individual capacity. In the case of a pistol, revolver, or other firearm capable of being concealed upon the person, on and after April 1, 1994, and until January 1, 2003, that individual shall have a basic firearms safety certificate in order for the exemption set forth in this paragraph to apply. Commencing January 1, 2003, the exemption shall not apply, and the individual shall obtain a handgun safety certificate prior to transferring ownership to himself or herself, or taking possession of a handgun in an individual capacity.

(j) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to deliveries, transfers, or returns of firearms made pursuant to Section 12028, 12028.5, or 12030.

(k) Section 12071, subdivision (c) of Section 12072, and subdivision (b) of Section 12801 shall not apply to any of the following:

(1) The delivery, sale, or transfer of unloaded firearms that are not pistols, revolvers, or other firearms capable of being concealed upon the person by a dealer to another dealer upon proof of compliance with the requirements of paragraph (1) of subdivision (f) of Section 12072.

(2) The delivery, sale, or transfer of unloaded firearms by dealers to persons who reside outside this state who are licensed pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto.

(3) The delivery, sale, or transfer of unloaded firearms to a wholesaler if the firearms are being returned to the wholesaler and are intended as merchandise in the wholesaler's business.

(4) The delivery, sale, or transfer of unloaded firearms by one dealer to another dealer if the firearms are intended as merchandise in the receiving dealer's business upon proof of compliance with the requirements of paragraph (1) of subdivision (f) of Section 12072.

(5) The delivery, sale, or transfer of an unloaded firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer to himself or herself.

(6) The loan of an unloaded firearm by a dealer who also operates a target facility that holds a business or regulatory license on the premises of the building designated in the license or whose building designated in the license is on the premises of any club or organization organized for the purposes of practicing shooting at targets upon established ranges, whether public or private, to a person at that target facility or that club or organization, if the firearm is at all times kept within the premises of the target range or on the premises of the club or organization.

(*l*) A person who is exempt from subdivision (d) of Section 12072 or is otherwise not required by law to report his or her acquisition, ownership, or disposal of a pistol, revolver, or other firearm capable of being concealed upon the person or who moves out of this state with his or her pistol, revolver, or other firearm capable of being concealed upon the person may submit a report of the same to the Department of Justice in a format prescribed by the department.

(m) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the delivery, sale, or transfer of unloaded firearms to a wholesaler as merchandise in the wholesaler's business by manufacturers or importers licensed to engage in that business pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto, or by another wholesaler, if the delivery, sale, or transfer is made in accordance with Chapter 44 (commencing with Section 921) of Title 18 of the United States Code.

(n) (1) The waiting period described in Section 12071 or 12072 shall not apply to the delivery, sale, or transfer of a pistol, revolver, or other firearm capable of being concealed upon the person by a dealer in either of the following situations:

(A) The dealer is delivering the firearm to another dealer and it is not intended as merchandise in the receiving dealer's business.

(B) The dealer is delivering the firearm to himself or herself and it is not intended as merchandise in his or her business.

(2) In order for this subdivision to apply, both of the following shall occur:

(A) If the dealer is receiving the firearm from another dealer, the dealer receiving the firearm shall present proof to the dealer delivering the firearm that he or she is licensed pursuant to Section 12071 by complying with paragraph (1) of subdivision (f) of Section 12072.

(B) Whether the dealer is delivering, selling, or transferring the firearm to himself or herself or to another dealer, on the date that the application to purchase is completed, the dealer delivering the firearm shall forward by prepaid mail to the Department of Justice a report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077. Where the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit an electronic or telephonic report of the same and the type of information concerning the purchaser or transferee as is indicated in subdivision (b) of Section 12077.

(o) Section 12071 and subdivisions (c) and (d) of Section 12072 shall not apply to the delivery, sale, or transfer of firearms regulated pursuant to Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275), if the delivery, sale, or transfer is conducted in accordance with the applicable provisions of Section 12020, Chapter 2 (commencing with Section 12200), or Chapter 2.3 (commencing with Section 12275).

(p) (1) Paragraph (3) of subdivision (a) and subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor, with the express permission of the parent or legal guardian of the minor, if the loan does not exceed 30 days in duration and is for a lawful purpose.

(2) Paragraph (3) of subdivision (a) of Section 12072, subdivision (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by a person who is not the parent or legal guardian of the minor if all of the following circumstances exist:

(A) The minor has the written consent of his or her parent or legal guardian that is presented at the time of, or prior to the time of, the loan, or is accompanied by his or her parent or legal guardian at the time the loan is made.

(B) The minor is being loaned the firearm for the purpose of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion

picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(C) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(D) The duration of the loan does not, in any event, exceed 10 days.

(3) Paragraph (3) of subdivision (a), subdivision (d) of Section 12072, and subdivision (b) of Section 12801 shall not apply to the loan of a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian if both of the following circumstances exist:

(A) The minor is being loaned the firearm for the purposes of engaging in a lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(B) The duration of the loan does not exceed the amount of time that is reasonably necessary to engage in the lawful, recreational sport, including, but not limited to, competitive shooting, or agricultural, ranching, or hunting activity, or a motion picture, television, or video production, or entertainment or theatrical event, the nature of which involves the use of a firearm.

(4) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her parent or legal guardian.

(5) Paragraph (3) of subdivision (a) of Section 12072 shall not apply to the transfer or loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a minor by his or her grandparent who is not the legal guardian of the minor if the transfer is done with the express permission of the parent or legal guardian of the minor.

(6) Subparagraph (A) of paragraph (3) of subdivision (a) of Section 12072 shall not apply to the sale of a handgun if both of the following requirements are satisfied:

(A) The sale is to a person who is at least 18 years of age.

(B) The firearm is an antique firearm as defined in paragraph (16) of subsection (a) of Section 921 of Title 18 of the United States Code.

(q) Subdivision (d) of Section 12072 shall not apply to the loan of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person to a licensed hunter for use by that licensed

hunter for a period of time not to exceed the duration of the hunting season for which that firearm is to be used.

(r) The waiting period described in Section 12071, 12072, or 12084 shall not apply to the delivery, sale, or transfer of a firearm to the holder of a special weapons permit issued by the Department of Justice issued pursuant to Section 12095, 12230, 12250, or 12305. On the date that the application to purchase is completed, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the same as described in subdivision (b) or (c) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the same as is indicated in subdivision (b) or (c) of Section 12077.

(s) Subdivision (d) of Section 12072 and subdivision (b) of Section 12801 shall not apply to the loan of an unloaded firearm or the loan of a firearm loaded with blank cartridges, to a person 18 years of age or older, for use solely as a prop for a motion picture, television, or video production or an entertainment or theatrical event.

(t) (1) The waiting period described in Sections 12071, 12072, and 12084 shall not apply to the sale, delivery, loan, or transfer of a firearm that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, by a dealer or through a law enforcement agency to a person who is licensed as a collector pursuant to Chapter 44 (commencing with Section 921) of Title 18 of the United States Code and the regulations issued pursuant thereto who has a current certificate of eligibility issued to him or her by the Department of Justice pursuant to Section 12071. On the date that the delivery, sale, or transfer is made, the dealer delivering the firearm or the law enforcement agency processing the transaction pursuant to Section 12084, shall forward by prepaid mail to the Department of Justice a report of the transaction pursuant to subdivision (b) of Section 12077 or Section 12084. If the electronic or telephonic transfer of applicant information is used, on the date that the application to purchase is completed, the dealer delivering the firearm shall transmit to the Department of Justice an electronic or telephonic report of the transaction as is indicated in subdivision (b) or (c) of Section 12077.

(2) Subdivision (d) of Section 12072 shall not apply to the infrequent sale, loan, or transfer of a firearm that is not a pistol, revolver, or other firearm capable of being concealed upon the person, which is a curio or relic manufactured at least 50 years prior to the current date, but not including replicas thereof, as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(u) As used in this section:

(1) ''Infrequent'' has the same meaning as in paragraph (1) of subdivision (c) of Section 12070.

(2) ''A person taking title or possession of firearms by operation of law'' includes, but is not limited to, any of the following instances wherein an individual receives title to, or possession of, firearms:

(A) The executor or administrator of an estate if the estate includes firearms.

(B) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(C) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(D) A receiver performing his or her functions as a receiver if the receivership estate includes firearms.

(E) A trustee in bankruptcy performing his or her duties if the bankruptcy estate includes firearms.

(F) An assignee for the benefit of creditors performing his or her functions as an assignee, if the assignment includes firearms.

(G) A transmutation of property consisting of firearms pursuant to Section 850 of the Family Code.

(H) Firearms passing to a surviving spouse pursuant to Chapter 1 (commencing with Section 13500) of Part 2 of Division 8 of the Probate Code.

(I) Firearms received by the family of a police officer or deputy sheriff from a local agency pursuant to Section 50081 of the Government Code.

(J) The transfer of a firearm by a law enforcement agency to the person who found the firearm where the delivery is to the person as the finder of the firearm pursuant to Article 1 (commencing with Section 2080) of Chapter 4 of Division 3 of the Civil Code.

SEC. 13. Section 12125 of the Penal Code is amended to read:

12125. (a) Commencing January 1, 2001, any person in this state who manufactures or causes to be manufactured, imports into the state for sale, keeps for sale, offers or exposes for sale, gives, or lends any unsafe handgun shall be punished by imprisonment in a county jail not exceeding one year.

(b) This section shall not apply to any of the following:

(1) The manufacture in this state, or importation into this state, of any prototype pistol, revolver, or other firearm capable of being concealed upon the person when the manufacture or importation is for the sole purpose of allowing an independent laboratory certified by the Department of Justice pursuant to Section 12130 to conduct an independent test to determine whether that pistol, revolver, or other firearm capable of being concealed upon the person is prohibited by this

chapter, and, if not, allowing the department to add the firearm to the roster of pistols, revolvers, and other firearms capable of being concealed upon the person that may be sold in this state pursuant to Section 12131.

(2) The importation or lending of a pistol, revolver, or other firearm capable of being concealed upon the person by employees or authorized agents of entities determining whether the weapon is prohibited by this section.

(3) Firearms listed as curios or relics, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(4) The sale or purchase of any pistol, revolver or other firearm capable of being concealed upon the person, if the pistol, revolver, or other firearm is sold to, or purchased by, the Department of Justice, any police department, any sheriff's official, any marshal's office, the Youth and Adult Correctional Agency, the California Highway Patrol, any district attorney's office, or the military or naval forces of this state or of the United States for use in the discharge of their official duties. Nor shall anything in this section prohibit the sale to, or purchase by, sworn members of these agencies of any pistol, revolver, or other firearm capable of being concealed upon the person.

(c) Violations of subdivision (a) are cumulative with respect to each handgun and shall not be construed as restricting the application of any other law. However, an act or omission punishable in different ways by this section and other provisions of law shall not be punished under more than one provision, but the penalty to be imposed shall be determined as set forth in Section 654.

SEC. 14. Section 12133 of the Penal Code is amended to read:

12133. The provisions of this chapter shall not apply to a single-action revolver that has at least a 5-cartridge capacity with a barrel length of not less than three inches, and meets any of the following specifications:

(a) Was originally manufactured prior to 1900 and is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations.

(b) Has an overall length measured parallel to the barrel of at least 7 $^1/_2$ inches when the handle, frame or receiver, and barrel are assembled.

(c) Has an overall length measured parallel to the barrel of at least 7 $^1/_2$ inches when the handle, frame or receiver, and barrel are assembled and that is currently approved for importation into the United States pursuant to the provisions of paragraph (3) of subsection (d) of Section 925 of Title 18 of the United States Code.

SEC. 15. 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 479.11 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 479.11 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 that device, except those 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. 16. Section 12807 of the Penal Code is amended to read:

12807. (a) The following persons, properly identified, are exempted from the handgun safety certificate requirement in subdivision (b) of Section 12801:

(1) Any active or honorably retired peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

(2) Any active or honorably retired federal officer or law enforcement agent.

(3) Any reserve peace officer, as defined in Section 832.6.

(4) Any person who has successfully completed the course of training specified in Section 832.

(5) A firearms dealer licensed pursuant to Section 12071, who is acting in the course and scope of his or her activities as a person licensed pursuant to Section 12071.

(6) A federally licensed collector who is acquiring or being loaned a handgun that is a curio or relic, as defined in Section 478.11 of Title 27 of the Code of Federal Regulations, who has a current certificate of eligibility issued to him or her by the department pursuant to Section 12071.

(7) A person to whom a handgun is being returned, where the person receiving the firearm is the owner of the firearm.

(8) A family member of a peace officer or deputy sheriff from a local agency who receives a firearm pursuant to Section 50081 of the Government Code.

(9) Any individual who has a valid concealed weapons permit issued pursuant to Section 12050.

(10) An active, or honorably retired member of the United States Armed Forces, the National Guard, the Air National Guard, the active reserve components of the United States, where individuals in those organizations are properly identified. For purposes of this section, proper identification includes the Armed Forces Identification Card, or other written documentation certifying that the individual is an active or honorably retired member.

(11) Any person who is authorized to carry loaded firearms pursuant to subdivision (c) or (d) of Section 12031.

(12) Persons who are the holders of a special weapons permit issued by the department pursuant to Section 12095, 12230, 12250, or 12305.

(b) The following persons who take title or possession of a handgun by operation of law in a representative capacity, until or unless they transfer title ownership of the handgun to themselves in a personal capacity, are exempted from the handgun safety certificate requirement in subdivision (b) of Section 12801:

(1) The executor or administrator of an estate.

(2) A secured creditor or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, or an agent or employee thereof when the firearms are possessed as collateral for, or as a result of, a default under a security agreement under the Commercial Code.

(3) A levying officer, as defined in Section 481.140, 511.060, or 680.260 of the Code of Civil Procedure.

(4) A receiver performing his or her functions as a receiver.

(5) A trustee in bankruptcy performing his or her duties.

(6) An assignee for the benefit of creditors performing his or her functions as an assignee.

SEC. 17. Section 31600 of the Vehicle Code is amended to read:

31600. For the purposes of this division ''explosive'' or ''explosives'' means any substance, or combination of substances, the primary or common purpose of which is detonation or rapid combustion and which is capable of a relatively instantaneous or rapid release of gas and heat. ''Explosive'' or ''explosives'' includes, but is not necessarily limited to, explosives as defined in Section 12000 of the Health and Safety Code, and any of the following:

(a) Dynamite, nitroglycerine, picric acid, lead azide, fulminate of mercury, black powder, smokeless powder, propellant explosives, detonating primers, blasting caps, commercial boosters, ammonium nitrate-fuel oil mixture (blasting agent), or any explosives as defined in Section 841 of Title 18 of the United States Code and published pursuant to Section 555.23 of Title 27 of the Code of Federal Regulations, when transported in a combined load with any explosive, as defined in this section.

(b) Substances determined to be division 1.1, 1.2, 1.3, or 1.6 explosives as classified by the United States Department of Transportation.

(c) ''Explosive'' or ''explosives'' does not include small arms ammunition or any other division 1.4 explosive.

(d) This division shall not apply to special fireworks classified by the United States Department of Transportation as division 1.2 or 1.3 explosives when those special fireworks are regulated by and in conformance with Part 2 (commencing with Section 12500) of Division 11 of the Health and Safety Code.

(e) Nothing in this chapter supersedes any regulations for the transportation of hazardous materials as defined in Section 2402.7 or as regulated in Division 14.1 (commencing with Section 32000).

SEC. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to preserve public safety by ensuring the proper administration of firearms laws referencing the Code of Federal Regulations, it is necessary that this act take effect immediately.

CHAPTER 248

An act to amend Section 832.9 of the Penal Code, relating to public safety officials.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 832.9 of the Penal Code is amended to read:

832.9. (a) A governmental entity employing a peace officer, as defined in Section 830, judge, court commissioner, or an attorney employed by the Department of Justice, the State Public Defender, or a county office of a district attorney or public defender shall reimburse the moving and relocation expenses of those employees, or any member of his or her immediate family residing with the officer in the same household or on the same property when it is necessary to move because the officer has received a credible threat that a life threatening action may be taken against the officer, judge, court commissioner, or an attorney employed by the Department of Justice, the State Public Defender, or a county office of the district attorney or public defender or his or her immediate family as a result of his or her employment.

(b) The person relocated shall receive actual and necessary moving and relocation expenses incurred both before and after the change of residence, including reimbursement for the costs of moving household effects either by a commercial household goods carrier or by the employee.

(1) Actual and necessary moving costs shall be those costs that are set forth in the Department of Personnel Administration rules governing promotional relocations while in the state service. The department shall not be required to administer this section.

(2) The public entity shall not be liable for any loss in value to a residence or for the decrease in value due to a forced sale.

(3) Except as provided in subdivision (c), peace officers, judges, court commissioners, and attorneys employed by the Department of Justice, the State Public Defender, or a county office of a district attorney or public defender shall receive approval of the appointing authority prior to incurring any cost covered by this section.

(4) Peace officers, judges, court commissioners, and attorneys employed by the Department of Justice, the State Public Defender, or a county office of a district attorney or public defender shall not be considered to be on duty while moving unless approved by the appointing authority.

(5) For a relocation to be covered by this section, the appointing authority shall be notified as soon as a credible threat has been received.

(6) Temporary relocation housing shall not exceed 60 days.

(7) The public entity ceases to be liable for relocation costs after 120 days of the original notification of a viable threat if the peace officer, judge, court commissioner, or attorney employed by the Department of Justice, the State Public Defender, or a county office of a district attorney or public defender has failed to relocate.

(c) (1) For purposes of the right to reimbursement of moving and relocation expenses pursuant to this section, judges shall be deemed to be employees of the State of California. A court commissioner shall be deemed to be an employee of the county in which the court where he or she is employed is located.

(2) For purposes of paragraph (3) of subdivision (b), a court commissioner shall receive approval by the presiding judge of the superior court in the county in which he or she is located.

(3) For purposes of paragraph (3) of subdivision (b), judges, including justices of the Supreme Court and the Courts of Appeal, shall receive approval from the Chief Justice, or his or her designee.

(d) As used in this section, ''credible threat'' means a verbal or written statement or a threat implied by a pattern of conduct or a combination of verbal or written statements and conduct made with the intent and the apparent ability to carry out the threat so as to cause the person who is the target of the threat to reasonably fear for his or her safety or the safety of his or her immediate family.

(e) As used in this section, ''immediate family'' means the spouse, parents, siblings, and children residing with the peace officer, judge, court commissioner, or attorney employed by the Department of Justice, the State Public Defender, or a county office of a district attorney or public defender.

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 249

An act to amend Section 70357 of, and to add Section 70379 to, the Government Code, and to amend Section 366.28 of the Welfare and Institutions Code, relating to courts, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 70357 of the Government Code is amended to read:

70357. (a) 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, multiplying 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. The consumption rates for 1999–2000 shall be the average of the rates for each month of that fiscal year.

(b) If the county states in its county facilities payment calculation under Section 70363 that either utility consumption amounts or rates are not reasonably available for any court facility for any or all of the 1995–96 to 1999–2000, inclusive, fiscal years after a good faith effort to obtain those consumption amounts or rates, then the cost of utilities for that facility shall be included in the county facilities payment by calculating the five-year average of the utility costs incurred in connection with the operation of the building for the 1995–96 to 1999-2000, inclusive, fiscal years. This amount shall be calculated by multiplying the yearly utility costs for each court facility 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 facility from the county to the state, inclusive, and then averaging the five inflation-adjusted yearly values.

(c) If the county states in its county facilities payment calculation under Section 70363 that the utility cost information described in subdivisions (a) and (b) is not reasonably available for any court facilities for any or all of the fiscal years 1995–96 to 1999–2000, inclusive, after a good faith effort to obtain that information, then the cost of utilities for those facilities shall be calculated using all relevant

information available to the county and to the Administrative Office of the Courts.

(d) For purposes of any good faith statement made pursuant to subdivision (b) or (c), the county shall include a detailed description of all activities it undertook to obtain the information and the results of each activity.

(e) If the county implemented a special improvement to increase energy efficiency during the 1995–96 fiscal year or thereafter, and that special improvement resulted in measurable and ongoing net cost savings, then the county may include a description of the special improvement and the resulting cost savings as part of its county facilities payment calculation under Section 70363. The amount of any reduction in the county facilities payment calculation shall be limited to the demonstrable ongoing cost savings to the state directly resulting from the special improvement only to the extent not already reflected in the cost or consumption data used to determine utilities costs. The county shall document or demonstrate the savings and the fact that the savings are not already reflected.

(f) As used in this section, ''utility costs'' include, but are not limited to, natural gas, heating oil, electricity, water, sewage, and garbage. 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:

(1) A lease expressly provides that the utilities are to be paid by the lessor.

(2) There is no payment by the lessee for the utilities, except as part of the lease payment.

(3) The lease payment is included in the county facilities payment.

SEC. 2. Section 70379 is added to the Government Code, to read:

70379. (a) The Court Facilities Architecture Revolving Fund is hereby established in the State Treasury, and, notwithstanding Section 13340, the fund is continuously appropriated, without regard to fiscal years.

(1) With the approval of the Department of Finance, and except as otherwise specified in this section, there shall be transferred to, or deposited in, the fund all money appropriated, contributed, or made available from any source, including sources other than state appropriations, for the purposes described in paragraph (2).

(2) Moneys transferred to, or deposited in, the fund shall be those administered by the Administrative Office of the Courts under subdivision (b) of Section 70374 for the construction, alteration, repair, and improvement of trial and appellate court buildings, including, but not limited to, services, new construction, major construction, minor

construction, maintenance, improvements, and equipment, and other building and improvement projects.

(3) In addition to the approval of the Department of Finance, the transfer or deposit of moneys into the fund shall be authorized by the Administrative Office of the Courts, both with regard to funds appropriated for the purposes specified in paragraph (2) or, as to funds from sources other than state appropriations, subject to any written agreement between the contributor or contributors of funds and the Administrative Office of the Courts.

(b) Money from state sources transferred to, or deposited in, the fund for construction, services, equipment, repair, or improvement shall be an amount necessary based on the actual, known, or firm fixed price, upon approval of the Department of Finance.

Any amount available in the state appropriation that is in excess of the amount necessary based upon final actual costs of the completed contract shall be transferred immediately to the credit of the fund from which the appropriation was made.

(c) Money transferred or deposited in the fund pursuant to subdivision (a) shall be available for expenditure by the Administrative Office of the Courts for the purposes for which appropriated, contributed, or made available, without regard to fiscal years.

SEC. 3. Section 366.28 of the Welfare and Institutions Code is amended to read:

366.28. (a) The Legislature finds and declares that delays caused by appeals from court orders designating the specific placement of a dependent child after parental rights have been terminated may cause a substantial detriment to the child. The Legislature recognizes that the juvenile court intervenes in placement decisions after parental rights have been terminated only in exceptional circumstances, and this section is not intended to place additional authority or responsibility on the juvenile court.

(b) (1) After parental rights have been terminated pursuant to Section 366.26, an order by the court that a dependent child is to reside in, be retained in, or be removed from a specific placement, is not appealable at any time unless all of the following apply:

(A) A petition for extraordinary writ review was filed in a timely manner.

(B) The petition substantively addressed the specific issues to be challenged and supported that challenge by an adequate record.

(C) The petition was summarily denied or otherwise not decided on the merits.

(2) Failure to file a petition for extraordinary writ review within the period specified by rule of court, to substantively address the specific placement order that is challenged, or to support that challenge by an

adequate record shall preclude subsequent review by appeal of the findings and orders made pursuant to this section.

(c) This section does not affect the right of a parent, a legal guardian, or the child to appeal any order that is otherwise appealable and that is issued at a hearing held pursuant to Section 366.26.

(d) The Judicial Council shall adopt a rule of court on or before January 1, 2005, to implement this section. This section shall become operative after the rule of court is adopted.

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

SEC. 5. This act 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:

It is necessary that this act take effect immediately as an urgency statute for the following reasons:

(a) The recalculation of the cost of utilities to be included in the county facilities payment is necessary in order to recognize the proper shift of utility costs as a result of the transfer of court facilities to the state.

(b) The Architecture Revolving Fund (ARF) is necessary to allow funds to be expended beyond the budget year in which they are appropriated. Typically, capital projects have multiple phases such as acquisition, preliminary plans, working drawings, and construction. All phases cannot be completed in the budget year, so the funds must be encumbered through a transfer to the ARF, which will enable the Judicial Council to liquidate the funds beyond the budget year.

(c) The current deadline for adoption of court rules pursuant to Chapter 247 of the Statutes of 2003 will not be met. In order to avoid confusion about the effective date of those provisions, it is necessary that the deadline of July 1, 2004, be extended to January 1, 2005.

CHAPTER 250

An act to amend Sections 6240 and 6389 of the Family Code, and to amend Section 13700 of the Penal Code, relating to domestic violence.

[Approved by Governor August 23, 2004. Filed with
Secretary of State August 23, 2004.]

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

SECTION 1. Section 6240 of the Family Code is amended to read:

6240. As used in this part:

(a) ''Judicial officer'' means a judge, commissioner, or referee designated under Section 6241.

(b) ''Law enforcement officer'' means one of the following officers who requests or enforces an emergency protective order under this part:

(1) A police officer.

(2) A sheriff's officer.

(3) A peace officer of the Department of the California Highway Patrol.

(4) A peace officer of the University of California Police Department.

(5) A peace officer of the California State University and College Police Departments.

(6) A peace officer of the Department of Parks and Recreation, as defined in subdivision (f) of Section 830.2 of the Penal Code.

(7) A peace officer of the Department of General Services of the City of Los Angeles, as defined in subdivision (c) of Section 830.31 of the Penal Code.

(8) A housing authority patrol officer, as defined in subdivision (d) of Section 830.31 of the Penal Code.

(9) A peace officer for a district attorney, as defined in Section 830.1 or 830.35 of the Penal Code.

(10) A parole officer, probation officer, or deputy probation officer, as defined in Section 830.5 of the Penal Code.

(11) A peace officer of a California Community College police department, as defined in subdivision (a) of Section 830.32.

(12) A peace officer employed by a police department of a school district, as defined in subdivision (b) of Section 830.32.

(c) ''Abduct'' means take, entice away, keep, withhold, or conceal.

SEC. 2. 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) On all forms providing notice that a protective order has been requested or granted, the Judicial Council, shall include a notice that, upon service of the 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) Upon issuance of a protective order, as defined in Section 6218, 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 being served with 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. 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.

(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. 3. Section 13700 of the Penal Code is amended to read:

13700. As used in this title:

(a) ''Abuse'' means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself or herself, or another.

(b) ''Domestic violence'' means abuse committed against an adult or a minor who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, ''cohabitant'' means two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

(c) ''Officer'' means any officer or employee of a local police department or sheriff's office, and any peace officer of the Department of the California Highway Patrol, the Department of Parks and Recreation, the University of California Police Department, or the California State University and College Police Departments, as defined in Section 830.2, a peace officer of the Department of General Services of the City of Los Angeles, as defined in subdivision (c) of Section 830.31, a housing authority patrol officer, as defined in subdivision (d) of Section 830.31, or a peace officer as defined in subdivisions (a) and (b) of Section 830.32.

(d) ''Victim'' means a person who is a victim of domestic violence.

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.

For other costs imposed by this act, no reimbursement is required 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 are the result of a program for which legislative authority was requested by that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

CHAPTER 251

An act to add Section 8546.5 to the Government Code, relating to the State Auditor.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 8546.5 is added to the Government Code, to read:

8546.5. (a) The State Auditor may establish a high-risk government agency audit program for the purpose of identifying, auditing, and issuing reports on any agency of the state, whether created by the California Constitution or otherwise, that the State Auditor identifies as being at high risk for the potential of waste, fraud, abuse, and mismanagement or that has major challenges associated with its economy, efficiency, or effectiveness.

(b) In addition to identifying an agency as high risk on the basis of weaknesses identified in audit and investigative reports produced by the bureau, the State Auditor may consult with the Legislative Analyst, the Milton Marks ''Little Hoover'' Commission on California State Government Organization and Economy, the Office of Inspector General within the Department of Corrections, the Department of Finance, and other state agencies that have oversight responsibilities over any other agency of the state, in identifying state agencies that are at high risk.

(c) The State Auditor shall notify the Joint Legislative Audit Committee whenever it identifies a state agency as at high risk.

(d) The State Auditor may issue audit reports with recommendations for improvement in state agencies identified as at high risk not less than once every two years.

(e) The State Auditor may require state agencies identified as high risk to periodically report to the auditor regarding the status of recommendations for improvement made by the State Auditor or other state oversight agencies.

CHAPTER 252

An act to amend Sections 4450 and 4454 of the Government Code, relating to disability access, and making an appropriation therefor.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 4450 of the Government Code is amended to read:

4450. (a) It is the purpose of this chapter to ensure that all buildings, structures, sidewalks, curbs, and related facilities, constructed in this state by the use of state, county, or municipal funds, or the funds of any political subdivision of the state shall be accessible to and usable by persons with disabilities.

(b) The State Architect shall develop and submit proposed building standards to the California Building Standards Commission for approval and adoption pursuant to Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13 of the Health and Safety Code and shall develop other regulations for making buildings, structures, sidewalks, curbs, and related facilities accessible to and usable by persons with disabilities. The regulations and building standards relating to access for persons with disabilities shall be consistent with the standards for buildings and structures that are contained in pertinent provisions of the latest edition of the selected model code, as adopted by the California Building Standards Commission, and these regulations and building standards shall contain additional requirements relating to buildings, structures, sidewalks, curbs, and other related facilities the State Architect determines are necessary to assure access and usability for persons with disabilities. In developing and revising these additional requirements, the State Architect shall consult with the Department of Rehabilitation, the League of California Cities, the California State

Association of Counties, and at least one private organization representing and comprised of persons with disabilities.

(c) In no case shall the State Architect's regulations and building standards prescribe a lesser standard of accessibility or usability than provided by the Accessibility Guidelines prepared by the federal Access Board as adopted by the United States Department of Justice to implement the Americans with Disabilities Act of 1990 (Public Law 101-336).

SEC. 2. Section 4454 of the Government Code is amended to read:

4454. (a) Where state funds are utilized for any building or facility subject to this chapter, or where funds of counties, municipalities, or other political subdivisions are utilized for the construction of elementary school, secondary school, or community college buildings and facilities subject to this chapter, no contract shall be awarded until the Department of General Services has issued written approval stating that the plans and specifications comply with the intent of this chapter.

(b) In each case the application for approval shall be accompanied by the plans and full, complete, and accurate specifications, which shall comply in every respect with any and all requirements prescribed by the Department of General Services.

(c) The application shall be accompanied by a filing fee in amounts as determined by the Department of General Services. All fees shall be deposited into the Access for Handicapped Account, which is hereby renamed the Disability Access Account as of July 1, 2001, and established in the General Fund. Notwithstanding Section 13340, the account is continuously appropriated for expenditures for the use of the Department of General Services, in carrying out the department's responsibilities under this chapter.

(d) The Department of General Services shall consult with the Department of Rehabilitation in identifying the requirements necessary to comply with this chapter.

(e) The Department of General Services, Division of the State Architect, shall include the cost of carrying out the responsibilities identified in this chapter as part of the plan review costs in determining fees.

CHAPTER 253

An act to amend Sections 30504, 30804.7, 31751, and 31751.7 of, to amend and repeal Sections 30503 and 31751.3 of, and to repeal Sections 30526 and 31766 of the Food and Agricultural Code, relating to animals.

[Approved by Governor August 23, 2004. Filed with
Secretary of State August 23, 2004.]

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

SECTION 1. Section 30503 of the Food and Agricultural Code, as amended by Section 2 of Chapter 747 of the Statutes of 1998, is amended to read:

30503. (a) (1) Except as otherwise provided in subdivision (b), no public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall sell or give away to a new owner any dog that has not been spayed or neutered.

(2) For the purposes of this section a ''rescue group'' is a for-profit or not-for-profit entity, or a collaboration of individuals with at least one of its purposes being the sale or placement of dogs that have been removed from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane shelter or that have been previously owned by any person other than the original breeder of that dog.

(b) (1) If a veterinarian licensed to practice veterinary medicine in this state certifies that a dog is too sick or injured to be spayed or neutered, or that it would otherwise be detrimental to the health of the dog to be spayed or neutered, the adopter or purchaser shall pay the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group a deposit of not less than forty dollars ($40), and not more than seventy-five dollars ($75).

(2) The entity shall establish the amount of the deposit at the level it determines is necessary to encourage the spaying or neutering of dogs.

(3) The deposit shall be temporary, and shall only be retained until the dog is healthy enough to be spayed or neutered, as certified by a veterinarian licensed to practice veterinary medicine in this state.

(4) The dog shall be spayed or neutered within 14 business days of that certification.

(5) The adopter or purchaser shall obtain written proof of spaying or neutering from the veterinarian performing the operation.

(6) If the adopter or purchaser presents proof of spaying or neutering to the entity from which the dog was obtained within 30 business days of obtaining the proof, the adopter or purchaser shall receive a full refund of the deposit.

(c) Public animal control agencies or shelters, society for the prevention of cruelty to animals shelters, humane society shelters, and rescue groups may enter into cooperative agreements with each other

and with veterinarians in lieu of requiring spaying and neutering deposits to carry out this section.

(d) Any funds from unclaimed deposits made pursuant to this section, as it read on January 1, 1999, and any funds from deposits that are unclaimed after January 1, 2000, may be expended only for programs to spay or neuter dogs and cats, including agreements with a society for the prevention of cruelty to animals or a humane society or licensed veterinarian to operate a program to spay or neuter dogs and cats.

(e) This section only applies to a county that has a population exceeding 100,000 persons as of January 1, 2000, and to cities within that county.

SEC. 2. Section 30503 of the Food and Agricultural Code, as added by Section 2.3 of Chapter 747 of the Statutes of 1998, is repealed.

SEC. 3. Section 30504 of the Food and Agricultural Code is amended to read:

30504. For purposes of this division, each member of a litter of puppies, weaned or unweaned, shall be treated as an individual animal.

SEC. 4. Section 30526 of the Food and Agricultural Code is repealed.

SEC. 5. Section 30804.7 of the Food and Agricultural Code is amended to read:

30804.7. (a) The owner of a nonspayed or unneutered dog that is impounded once by a city or county animal control agency or shelter, society for the prevention of cruelty to animals, or humane society, shall be fined thirty-five dollars ($35) on the first occurrence, fifty dollars ($50) on the second occurrence, and one hundred dollars ($100) for the third or subsequent occurrence. These fines are for unneutered impounded animals only, and are not in lieu of any fines or impound fees imposed by any individual city, county, public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane society shelter.

(b) An animal control officer, humane officer, police officer, peace officer, or any agency authorized to enforce the Penal Code may write citations with a civil penalty stated in an amount corresponding to the violation as provided in subdivision (a). The fines shall be paid to the local municipality or public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane society shelter. Any funds collected under this section shall be expended for the purpose of humane education, programs for low cost spaying and neutering of dogs, and any additional costs incurred by the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group in the administration of the requirements of this division.

(c) This section applies to each county and cities within each county, regardless of population.

(d) No city or county, society for the prevention of cruelty to animals, or humane society is subject to any civil action by the owner of a dog that is spayed or neutered in accordance with this section.

SEC. 6. Section 31751 of the Food and Agricultural Code is amended to read:

31751. For the purposes of this division, each member of a litter of kittens, weaned or unweaned, shall be treated as an individual animal.

SEC. 7. Section 31751.3 of the Food and Agricultural Code, as added by Section 6 of Chapter 747 of the Statutes of 1998, is amended to read:

31751.3. (a) (1) Except as otherwise provided in subdivision (b), no public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall sell or give away to a new owner any cat that has not been spayed or neutered.

(2) For the purposes of this section, a ''rescue group'' is a for-profit or not-for-profit entity, or a collaboration of individuals with at least one of its purposes being the sale or placement of cats that have been removed from a public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane shelter or that have been previously owned by any person other than the original breeder of that cat.

(b) (1) If a veterinarian licensed to practice veterinary medicine in this state certifies that a cat is too sick or injured to be spayed or neutered, or that it would otherwise be detrimental to the health of the cat to be spayed or neutered, the adopter or purchaser shall pay the public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group a deposit of not less than forty dollars ($40), and not more than seventy-five dollars ($75).

(2) The entity shall establish the amount of the deposit at the level it determines is necessary to encourage the spaying or neutering of cats.

(3) The deposit shall be temporary, and shall only be retained until the cat is healthy enough to be spayed or neutered, as certified by a veterinarian licensed to practice veterinary medicine in this state.

(4) The cat shall be spayed or neutered within 14 business days of that certification.

(5) The adopter or purchaser shall obtain written proof of spaying or neutering from the veterinarian performing the operation.

(6) If the adopter or purchaser presents proof of spaying or neutering to the entity from which the cat was obtained within 30 business days of obtaining the proof, the adopter or purchaser shall receive a full refund of the deposit.

(c) Public animal control agencies or shelters, society for the prevention of cruelty to animals shelters, humane society shelters, and rescue groups may enter into cooperative agreements with each other and with veterinarians in lieu of requiring spaying and neutering deposits to carry out this section.

(d) Any funds from unclaimed deposits made pursuant to this section, as it read on January 1, 1999, and any funds from deposits unclaimed after January 1, 2000, may be expended only for programs to spay or neuter cats and dogs, including agreements with a society for the prevention of cruelty to animals or a humane society or licensed veterinarian, to operate a program to spay or neuter cats and dogs.

(e) This section only applies to a county that has a population exceeding 100,000 persons as of January 1, 2000, and to cities within that county.

SEC. 8. Section 31751.3 of the Food and Agricultural Code, as added by Section 6.3 of Chapter 747 of the Statutes of 1998, is repealed.

SEC. 9. Section 31751.7 of the Food and Agricultural Code is amended to read:

31751.7. (a) The owner of a nonspayed or unneutered cat that is impounded once by a city or county animal control agency or shelter, society for the prevention of cruelty to animals, or humane society, shall be fined thirty-five dollars ($35) on the first occurrence, fifty dollars ($50) on the second occurrence, and one hundred dollars ($100) for the third or subsequent occurrence. These fines are for unneutered impounded animals only, and are not in lieu of any fines or impound fees imposed by any individual city, county, public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane society shelter.

(b) An animal control officer, humane officer, police officer, peace officer, or any agency authorized to enforce the Penal Code may write citations with a civil penalty stated in an amount corresponding to the violation as provided in subdivision (a). The fines shall be paid to the local municipality or public animal control agency or shelter, society for the prevention of cruelty to animals shelter, or humane society shelter. Any funds collected under this section shall be expended for the purpose of humane education, programs for low cost spaying and neutering of cats, and any additional costs incurred by the animal shelter in the administration of the requirements of this division.

(c) Local ordinances concerning the adoption or placement procedures of any public animal control agency or shelter, society for the prevention of cruelty to animals shelter, humane society shelter, or rescue group shall be at least as restrictive as this division.

(d) This section applies to each county and cities within each county, regardless of population.

(e) No city or county, society for the prevention of cruelty to animals, or humane society is subject to any civil action by the owner of a cat that is spayed or neutered in accordance with this section.

SEC. 10. Section 31766 of the Food and Agricultural Code is repealed.

SEC. 11. 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 254

An act to amend Sections 8, 195, 307, 314, 600, 601, 603, 1500, 1501, 5079, 5211, 5215, 5510, 5511, 5513, 6320, 6321, 6322, 7211, 7215, 7510, 7511, 7513, 8320, 8321, 8322, 9211, 9215, 9411, 9413, 9510, 12254, 12351, 12355, 12460, 12461, 12463, 12590, 12591, 12592, 16101, 16403, 17001, 17058, 17104, and 17106 of, and to add Sections 20 and 21 to, the Corporations Code, relating to business organizations.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. It is the intent of the Legislature in enacting this act to meet the requirements of Section 102(a)(2)(B) of the federal Electronic Signatures in Global and National Commerce Act (''E-Sign Act''), to the extent that any provision of this act may be deemed to modify, limit, or supercede the provisions of Section 101 of the E-Sign Act. It is further the intent of the Legislature that a meeting of a corporation or limited liability company shall include a physical location unless the corporation or limited liability company has obtained the consent of all of the shareholders or members of the corporation or limited liability company, as applicable, to conduct a meeting by electronic transmission.

SEC. 2. Section 8 of the Corporations Code is amended to read:

8. Writing includes any form of recorded message capable of comprehension by ordinary visual means; and when used to describe communications between a corporation, partnership, or limited liability company and its shareholders, members, partners, directors, or managers, writing shall include electronic transmissions by and to a

corporation (Sections 20 and 21), electronic transmissions by and to a partnership (subdivisions (4) and (5) of Section 16101), and electronic transmissions by and to a limited liability company (paragraphs (1) and (2) of subdivision (o) of Section 17001). Whenever any notice, report, statement, or record is required or authorized by this code, it shall be made in writing in the English language.

Wherever any notice or other communication is required by this code to be mailed by registered mail by or to any person or corporation, the mailing of such notice or other communication by certified mail shall be deemed to be a sufficient compliance with the requirements of law.

SEC. 3. Section 20 is added to the Corporations Code, to read:

20. ''Electronic transmission by the corporation'' means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission for communications under or pursuant to this code, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a corporation to an individual shareholder or member under this code is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

SEC. 4. Section 21 is added to the Corporations Code, to read:

21. ''Electronic transmission to the corporation'' means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the corporation has provided from time to time to shareholders or members and directors for sending communications to the corporation, (2) posting on an electronic message board or network which the corporation has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the corporation has placed in effect reasonable measures to verify that the sender is the shareholder or member (in person or by proxy) or director purporting to send the transmission, and (c) that

creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

SEC. 5. Section 195 of the Corporations Code is amended to read:

195. ''Written'' or ''in writing'' includes facsimile, telegraphic, and other electronic communication when authorized by this code, including an electronic transmission by a corporation that satisfies the requirements of Section 20.

SEC. 6. Section 307 of the Corporations Code is amended to read:

307. (a) Unless otherwise provided in the articles or, subject to paragraph (5) of subdivision (a) of Section 204, in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who provides a waiver of notice or a consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members

participating in the meeting are able to hear one another. Participation in a meeting through electronic transmission by and to the corporation (other than conference telephone and electronic video screen communication), pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the authorized number of directors constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-third the authorized number of directors or less than two, whichever is larger, unless the authorized number of directors is one, in which case one director constitutes a quorum.

(8) An act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board, subject to the provisions of Section 310 and subdivision (e) of Section 317. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a unanimous vote of the directors.

(c) This section applies also to committees of the board and incorporators and action by those committees and incorporators, mutatis mutandis.

SEC. 7. Section 314 of the Corporations Code is amended to read:

314. The original or a copy in writing or in any other form capable of being converted into clearly legible tangible form of the bylaws or of the minutes of any incorporators', shareholders', directors', committee or other meeting or of any resolution adopted by the board or a committee thereof, or shareholders, certified to be a true copy by a person purporting to be the secretary or an assistant secretary of the corporation, is prima facie evidence of the adoption of such bylaws or

resolution or of the due holding of such meeting and of the matters stated therein.

SEC. 8. Section 600 of the Corporations Code is amended to read:

600. (a) Meetings of shareholders may be held at such place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, shareholder meetings shall be held at the principal executive office of the corporation. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, shareholders not physically present in person or by proxy at a meeting of shareholders may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of shareholders, be deemed present in person or by proxy, and vote at a meeting of shareholders whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (e).

(b) An annual meeting of shareholders shall be held for the election of directors on a date and at a time stated in or fixed in accordance with the bylaws. However, if the corporation is a regulated management company, as defined in Section 23701m of the Revenue and Taxation Code, a meeting of shareholders shall be held as required by the Federal Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1, et seq.). Any other proper business may be transacted at the annual meeting.

(c) If there is a failure to hold the annual meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the organization of the corporation or after its last annual meeting, the superior court of the proper county may summarily order a meeting to be held upon the application of any shareholder after notice to the corporation giving it an opportunity to be heard. The shares represented at such meeting, either in person or by proxy, and entitled to vote thereat shall constitute a quorum for the purpose of such meeting, notwithstanding any provision of the articles or bylaws or in this division to the contrary. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of such meeting, the record date for determination of shareholders entitled to vote and the form of notice of such meeting.

(d) Special meetings of the shareholders may be called by the board, the chairman of the board, the president or the holders of shares entitled to cast not less than 10 percent of the votes at the meeting or such additional persons as may be provided in the articles or bylaws.

(e) A meeting of the shareholders may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide shareholders (in person or by proxy) a reasonable opportunity to participate in the meeting and to vote on matters submitted to the shareholders, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, and (2) if any shareholder votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a shareholder pursuant to clause (b) of Section 20 for consent to conduct a meeting of shareholders by electronic transmission by and to the corporation, shall include a notice that absent consent of the shareholder pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a).

SEC. 9. Section 601 of the Corporations Code is amended to read:

601. (a) Whenever shareholders are required or permitted to take any action at a meeting a written notice of the meeting shall be given not less than 10 (or, if sent by third-class mail, 30) nor more than 60 days before the date of the meeting to each shareholder entitled to vote thereat. That notice shall state the place, date and hour of the meeting, the means of electronic transmission by and to the corporation (Sections 20 and 21) or electronic video screen communication, if any, by which shareholders may participate in that meeting, and (1) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (2) in the case of the annual meeting, those matters that the board, at the time of the mailing of the notice, intends to present for action by the shareholders, but subject to the provisions of subdivision (f) any proper matter may be presented at the meeting for that action. The notice of any meeting at which directors are to be elected shall include the names of nominees intended at the time of the notice to be presented by the board for election.

(b) Notice of a shareholders' meeting or any report shall be given personally, by electronic transmission by the corporation, or by first-class mail, or, in the case of a corporation with outstanding shares held of record by 500 or more persons (determined as provided in Section 605) on the record date for the shareholders' meeting, notice may also be sent third-class mail, or other means of written communication, addressed to the shareholder at the address of that shareholder appearing on the books of the corporation or given by the shareholder to the corporation for the purpose of notice; or if no address appears or is given, at the place where the principal executive office of the corporation is located or by publication at least once in a newspaper

of general circulation in the county in which the principal executive office is located. The notice or report shall be deemed to have been given at the time when delivered personally, sent by electronic transmission by the corporation, deposited in the mail, or sent by other means of written communication. An affidavit of mailing or electronic transmission by the corporation of any notice or report in accordance with the provisions of this division, executed by the secretary, assistant secretary or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

If any notice or report addressed to the shareholder at the address of that shareholder appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the shareholder at that address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the shareholder upon written demand of the shareholder at the principal executive office of the corporation for a period of one year from the date of the giving of the notice or report to all other shareholders.

Notice given by electronic transmission by the corporation under this subdivision shall be valid only if it complies with Section 20. Notwithstanding the foregoing, notice shall not be given by electronic transmission by the corporation under this subdivision after either of the following:

(1) The corporation is unable to deliver two consecutive notices to the shareholder by that means.

(2) The inability to so deliver the notices to the shareholder becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice.

(c) Upon request in writing to the corporation addressed to the attention of the chairperson of the board, president, vice president or secretary by any person (other than the board) entitled to call a special meeting of shareholders, the officer forthwith shall cause notice to be given to the shareholders entitled to vote that a meeting will be held at a time requested by the person or persons calling the meeting, not less than 35 nor more than 60 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The procedure provided in subdivision (c) of Section 305 shall apply to that application. The court may issue orders as may be appropriate, including, without limitation, orders designating the time and place of

the meeting, the record date for determination of shareholders entitled to vote and the form of notice.

(d) When a shareholders' meeting is adjourned to another time or place, unless the bylaws otherwise require and except as provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof (or the means of electronic transmission by and to the corporation or electronic video screen communication, if any, by which the shareholders may participate) are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business that might have been transacted at the original meeting. If the adjournment is for more than 45 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each shareholder of record entitled to vote at the meeting.

(e) The transactions of any meeting of shareholders, however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, provides a waiver of notice or consent to the holding of the meeting or an approval of the minutes thereof in writing. All those waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this division to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of shareholders need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, unless otherwise provided in the articles or bylaws, except as provided in subdivision (f).

(f) Any shareholder approval at a meeting, other than unanimous approval by those entitled to vote, pursuant to Section 310, 902, 1152, 1201, 1900 or 2007 shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

SEC. 10. Section 603 of the Corporations Code is amended to read:

603. (a) Unless otherwise provided in the articles, any action that may be taken at any annual or special meeting of shareholders may be taken without a meeting and without prior notice, if a consent in writing, setting forth the action so taken, shall be signed by the holders of

outstanding shares having not less than the minimum number of votes that would be necessary to authorize or take that action at a meeting at which all shares entitled to vote thereon were present and voted.

(b) Unless the consents of all shareholders entitled to vote have been solicited in writing, both of the following shall apply:

(1) Notice of any shareholder approval pursuant to Section 310, 317, 1152, 1201 or 2007 without a meeting by less than unanimous written consent shall be given at least 10 days before the consummation of the action authorized by that approval. Notice shall be given as provided in subdivision (b) of Section 601.

(2) Prompt notice shall be given of the taking of any other corporate action approved by shareholders without a meeting by less than unanimous written consent, to those shareholders entitled to vote who have not consented in writing. Notice shall be given as provided in subdivision (b) of Section 601.

(c) Any shareholder giving a written consent, or the shareholder's proxyholders, or a transferee of the shares or a personal representative of the shareholder or their respective proxyholders, may revoke the consent personally or by proxy by a writing received by the corporation prior to the time that written consents of the number of shares required to authorize the proposed action have been filed with the secretary of the corporation, but may not do so thereafter. The revocation is effective upon its receipt by the secretary of the corporation.

(d) Notwithstanding subdivision (a), directors may not be elected by written consent except by unanimous written consent of all shares entitled to vote for the election of directors; provided that the shareholders may elect a director to fill a vacancy, other than a vacancy created by removal, by the written consent of a majority of the outstanding shares entitled to vote.

SEC. 11. Section 1500 of the Corporations Code is amended to read:

1500. Each corporation shall keep adequate and correct books and records of account and shall keep minutes of the proceedings of its shareholders, board and committees of the board and shall keep at its principal executive office, or at the office of its transfer agent or registrar, a record of its shareholders, giving the names and addresses of all shareholders and the number and class of shares held by each. Those minutes and other books and records shall be kept either in written form or in another form capable of being converted into clearly legible tangible form or in any combination of the foregoing. When minutes and other books and records are kept in a form capable of being converted into clearly legible paper form, the clearly legible paper form into which those minutes and other books and records are converted shall be admissible in evidence, and accepted for all other purposes, to the same

extent as an original paper record of the same information would have been, provided that the paper form accurately portrays the record.

SEC. 12. Section 1501 of the Corporations Code is amended to read:

1501. (a) The board shall cause an annual report to be sent to the shareholders not later than 120 days after the close of the fiscal year, unless in the case of a corporation with less than 100 holders of record of its shares (determined as provided in Section 605) this requirement is expressly waived in the bylaws. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material sent pursuant to this section may be sent by electronic transmission by the corporation (Section 20). This report shall contain a balance sheet as of the end of that fiscal year and an income statement and statement of changes in financial position for that fiscal year, accompanied by any report thereon of independent accountants or, if there is no such report, the certificate of an authorized officer of the corporation that the statements were prepared without audit from the books and records of the corporation.

Unless so waived, the report shall be sent to the shareholders at least 15 (or, if sent by third-class mail, 35) days prior to the annual meeting of shareholders to be held during the next fiscal year, but this requirement shall not limit the requirement for holding an annual meeting as required by Section 600.

Notwithstanding Section 114, the financial statements of any corporation with fewer than 100 holders of record of its shares (determined as provided in Section 605) required to be furnished by this subdivision and subdivision (c) are not required to be prepared in conformity with generally accepted accounting principles if they reasonably set forth the assets and liabilities and the income and expense of the corporation and disclose the accounting basis used in their preparation.

(b) In addition to the financial statements required by subdivision (a), the annual report of any corporation having 100 or more holders of record of its shares (determined as provided in Section 605) either not subject to the reporting requirements of Section 13 of the Securities Exchange Act of 1934, or exempted from those reporting requirements by Section 12(g)(2) of that act, shall also describe briefly both of the following:

(1) Any transaction (excluding compensation of officers and directors) during the previous fiscal year involving an amount in excess of forty thousand dollars ($40,000) (other than contracts let at competitive bid or services rendered at prices regulated by law) to which the corporation or its parent or subsidiary was a party and in which any director or officer of the corporation or of a subsidiary or (if known to the corporation or its parent or subsidiary) any holder of more than 10

percent of the outstanding voting shares of the corporation had a direct or indirect material interest, naming the person and stating the person's relationship to the corporation, the nature of the person's interest in the transaction and, where practicable, the amount of the interest; provided that in the case of a transaction with a partnership of which the person is a partner, only the interest of the partnership need be stated; and provided further that no such report need be made in the case of any transaction approved by the shareholders (Section 153).

(2) The amount and circumstances of any indemnification or advances aggregating more than ten thousand dollars ($10,000) paid during the fiscal year to any officer or director of the corporation pursuant to Section 317; provided that no such report need be made in the case of indemnification approved by the shareholders (Section 153) under paragraph (2) of subdivision (e) of Section 317.

(c) If no annual report for the last fiscal year has been sent to shareholders, the corporation shall, upon the written request of any shareholder made more than 120 days after the close of that fiscal year, deliver or mail to the person making the request within 30 days thereafter the financial statements required by subdivision (a) for that year. A shareholder or shareholders holding at least 5 percent of the outstanding shares of any class of a corporation may make a written request to the corporation for an income statement of the corporation for the three-month, six-month or nine-month period of the current fiscal year ended more than 30 days prior to the date of the request and a balance sheet of the corporation as of the end of the period and, in addition, if no annual report for the last fiscal year has been sent to shareholders, the statements referred to in subdivision (a) for the last fiscal year. The statements shall be delivered or mailed to the person making the request within 30 days thereafter. A copy of the statements shall be kept on file in the principal office of the corporation for 12 months and it shall be exhibited at all reasonable times to any shareholder demanding an examination of the statements or a copy shall be mailed to the shareholder.

(d) The quarterly income statements and balance sheets referred to in this section shall be accompanied by the report thereon, if any, of any independent accountants engaged by the corporation or the certificate of an authorized officer of the corporation that the financial statements were prepared without audit from the books and records of the corporation.

(e) In addition to the penalties provided for in Section 2200, the superior court of the proper county shall enforce the duty of making and mailing or delivering the information and financial statements required by this section and, for good cause shown, may extend the time therefor.

(f) In any action or proceeding under this section, if the court finds the failure of the corporation to comply with the requirements of this section to have been without justification, the court may award an amount sufficient to reimburse the shareholder for the reasonable expenses incurred by the shareholder, including attorneys' fees, in connection with the action or proceeding.

(g) This section applies to any domestic corporation and also to a foreign corporation having its principal executive office in this state or customarily holding meetings of its board in this state.

SEC. 13. Section 5079 of the Corporations Code is amended to read:

5079. ''Written'' or ''in writing'' includes facsimile, telegraphic, and other electronic communication as authorized by this code, including an electronic transmission by a corporation that satisfies the requirements of Section 20.

SEC. 14. Section 5211 of the Corporations Code is amended to read:

5211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who provides a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication or electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 5212, 5233, 5234, 5235, and subdivision (e) of Section 5238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as the unanimous vote of the directors. For the purposes of this section only, ''all members of the board'' does not include an ''interested director'' as defined in Section 5233.

(c) The provisions of this section apply also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

SEC. 15. Section 5215 of the Corporations Code is amended to read:

5215. The original or a copy in writing or in any other form capable of being converted into clearly legible tangible form of the bylaws or of the minutes of any incorporators', members', directors', committee or other meeting or of any resolution adopted by the board or a committee thereof, or members, certified to be a true copy by a person purporting to be the secretary or an assistant secretary of the corporation, is prima facie evidence of the adoption of such bylaws or resolution or of the due holding of such meeting and of the matters stated therein.

SEC. 16. Section 5510 of the Corporations Code is amended to read:

5510. (a) Meetings of members may be held at a place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings of members shall be held at the principal executive office of the corporation. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, members not physically present in person (or, if proxies are allowed, by proxy) at a meeting of members may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of members, be deemed present in person (or, if proxies are allowed, by proxy), and vote at a meeting of members whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (f).

(b) A regular meeting of members shall be held on a date and time, and with the frequency stated in or fixed in accordance with the bylaws, but in any event in each year in which directors are to be elected at that meeting for the purpose of conducting such election, and to transact any other proper business which may be brought before the meeting.

(c) If a corporation with members is required by subdivision (b) to hold a regular meeting and fails to hold the regular meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the formation of the corporation, or after its last regular meeting, or if the corporation fails to hold a written ballot for a period of 60 days after the date designated therefor, then the superior court of the proper county may summarily order the meeting to be held or the ballot to be conducted upon the application of a member or the Attorney General, after notice to the corporation giving it an opportunity to be heard.

(d) The votes represented, either in person (or, if proxies are allowed, by proxy), at a meeting called or by written ballot ordered pursuant to subdivision (c), and entitled to be cast on the business to be transacted shall constitute a quorum, notwithstanding any provision of the articles or bylaws or in this part to the contrary. The court may issue such orders as may be appropriate including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice of the meeting.

(e) Special meetings of members for any lawful purpose may be called by the board, the chairman of the board, the president, or such other persons, if any, as are specified in the bylaws. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members.

(f) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide members in person (or, if proxies are allowed, by proxy) a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings, and (2) if any member votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a member pursuant to clause (b) of Section 20 for consent to conduct a meeting of members by electronic transmission by and to the corporation, shall include a notice that absent consent of the member pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a).

SEC. 17. Section 5511 of the Corporations Code is amended to read:

5511. (a) Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 nor more than 90 days before the date of the meeting to each member who, on the record date for notice of the meeting, is entitled to vote thereat; provided, however, that if notice is given by mail, and the notice is not mailed by first-class, registered, or certified mail, that notice shall be given not less than 20 days before the meeting. Subject to subdivision (f), and subdivision (b) of Section 5512, that notice shall state the place, date and time of the meeting, the means of electronic transmission by and to the corporation (Sections 20 and 21) or electronic video screen communication, if any, by which members may participate in that meeting, and (1) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (2) in the case of the regular meeting, those matters which

the board, at the time the notice is given, intends to present for action by the members, but, except as provided in subdivision (b) of Section 5512, any proper matter may be presented at the meeting for such action. The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time the notice is given to members.

(b) Notice of a members' meeting or any report shall be given personally, by electronic transmission by the corporation, or by mail or other means of written communication, addressed to the member at the address of such member appearing on the books of the corporation or given by the member to the corporation for purpose of notice; or if no such address appears or is given, at the place where the principal office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal office is located. An affidavit of giving of any notice or report in accordance with the provisions of this part, executed by the secretary, assistant secretary or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

If any notice or report addressed to a member at the address of such member appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the member at such address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the member upon written demand of the member at the principal office of the corporation for a period of one year from the date of the giving of the notice or report to all other members.

Notice given by electronic transmission by the corporation under this subdivision shall be valid only if it complies with Section 20. Notwithstanding the foregoing, notice shall not be given by electronic transmission by the corporation under this subdivision after either of the following:

(1) The corporation is unable to deliver two consecutive notices to the member by that means.

(2) The inability to so deliver the notices to the member becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice.

(c) Upon request in writing to the corporation addressed to the attention of the chairman of the board, president, vice president or secretary by any person (other than the board) entitled to call a special meeting of members, the officer forthwith shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the board, not less than 35 nor more than 90 days after the receipt of the request. If the notice is not given within 20 days after receipt of the

request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote and the form of notice.

(d) When a members' meeting is adjourned to another time or place, unless the bylaws otherwise require and except as provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof (or the means of electronic transmission by and to the corporation or electronic video screen communication, if any, by which members may participate) are announced at the meeting at which the adjournment is taken. No meeting may be adjourned for more than 45 days. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If after the adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

(e) The transactions of any meeting of members, however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, provides a waiver of notice or consent to the holding of the meeting or an approval of the minutes thereof in writing. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this part to be included in the notice but not so included, if such objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, unless otherwise provided in the articles or bylaws, except as provided in subdivision (f).

(f) Any approval of the members required under Section 5222, 5224, 5812, or 6610, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(g) A court may find that notice not given in conformity with this section is still valid, if it was given in a fair and reasonable manner.

SEC. 18. Section 5513 of the Corporations Code is amended to read:

5513. (a) Subject to subdivision (e), and unless prohibited in the articles or bylaws, any action which may be taken at any regular or special meeting of members may be taken without a meeting if the corporation distributes a written ballot to every member entitled to vote on the matter. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that ballot and any related material may be sent by electronic transmission by the corporation (Section 20) and responses may be returned to the corporation by electronic transmission to the corporation (Section 21). That ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the corporation.

(b) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) Ballots shall be solicited in a manner consistent with the requirements of subdivision (b) of Section 5511, and Section 5514. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and, with respect to ballots other than for the election of directors, shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted.

(d) Unless otherwise provided in the articles or bylaws, a written ballot may not be revoked.

(e) Directors may be elected by written ballot under this section, where authorized by the articles or bylaws, except that election by written ballot may not be authorized where the directors are elected by cumulative voting pursuant to Section 5616.

(f) When directors are to be elected by written ballot and the articles or bylaws prescribe a nomination procedure, the procedure may provide for a date for the close of nominations prior to the printing and distributing of the written ballots.

SEC. 19. Section 6320 of the Corporations Code is amended to read:

6320. (a) Each corporation shall keep:

(1) Adequate and correct books and records of account;

(2) Minutes of the proceedings of its members, board and committees of the board; and

(3) A record of its members giving their names and addresses and the class of membership held by each.

(b) Those minutes and other books and records shall be kept either in written form or in any other form capable of being converted into clearly legible tangible form or in any combination of the foregoing. When minutes and other books and records are kept in a form capable of being converted into clearly legible paper form, the clearly legible paper form into which those minutes and other books and records are converted shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided that the paper form accurately portrays the record.

SEC. 20. Section 6321 of the Corporations Code is amended to read:

6321. (a) Except as provided in subdivision (c), (d), or (f), the board shall cause an annual report to be sent to the members not later than 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material sent pursuant to this section may be sent by electronic transmission by the corporation (Section 20). That report shall contain in appropriate detail the following:

(1) The assets and liabilities, including the trust funds, of the corporation as of the end of the fiscal year.

(2) The principal changes in assets and liabilities, including trust funds, during the fiscal year.

(3) The revenue or receipts of the corporation, both unrestricted and restricted to particular purposes, for the fiscal year.

(4) The expenses or disbursements of the corporation, for both general and restricted purposes, during the fiscal year.

(5) Any information required by Section 6322.

(b) The report required by subdivision (a) shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation.

(c) Subdivision (a) does not apply to any corporation which receives less than twenty-five thousand dollars ($25,000) in gross revenues or receipts during the fiscal year.

(d) Where a corporation has provided, pursuant to Section 5510, for regular meetings of members less often than annually, then the report required by subdivision (a) need be made to members only with the frequency with which regular membership meetings are required, unless the articles or bylaws require a report more often.

(e) Subdivisions (c) and (d) notwithstanding, a report with the information required by subdivision (a) shall be furnished annually to:

(1) All directors of the corporation; and

(2) Any member who requests it in writing.

(f) A corporation which in writing solicits contributions from 500 or more persons need not send the report otherwise required by subdivision (a) if it does all of the following:

(i) Includes with any written material used to solicit contributions a written statement that its latest annual report will be mailed upon request and that such request may be sent to the corporation at a name and address which is set forth in the statement.

The term ''annual report'' as used in this subdivision refers to the report required by subdivision (a).

(ii) Promptly mails a copy of its latest annual report to any person who requests a copy thereof; and

(iii) Causes its annual report to be published not later than 120 days after the close of its fiscal year in a newspaper of general circulation in the county in which its principal office is located.

SEC. 21. Section 6322 of the Corporations Code is amended to read:

6322. (a) Any provision of the articles or bylaws notwithstanding, every corporation shall furnish annually to its members and directors a statement of any transaction or indemnification of a kind described in subdivision (d) or (e), if any such transaction or indemnification took place. If the corporation issues an annual report to all members, this subdivision shall be satisfied by including the required information in the annual report. A corporation which does not issue an annual report to all members, pursuant to subdivision (c) or (d) of Section 6321, shall satisfy this section by mailing or delivering to its members the required statement within 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that statement may be sent by electronic transmission by the corporation (Section 20).

(b) Except as provided in subdivision (c), a covered transaction under this section is a transaction in which the corporation, its parent, or its subsidiary was a party, and in which either of the following had a direct or indirect material financial interest:

(1) Any director or officer of the corporation, or its parent or subsidiary.

(2) Any holder of more than 10 percent of the voting power of the corporation, its parent or its subsidiary.

For the purpose of subdivision (d), an ''interested person'' is any person described in paragraph (1) or (2) of this subdivision.

(c) For the purpose of subdivision (b), a mere common directorship is not a material financial interest.

(d) The statement required by subdivision (a) shall describe briefly:

(1) Any covered transaction during the previous fiscal year involving more than fifty thousand dollars ($50,000), or which was one of a number of covered transactions in which the same interested person had a direct or indirect material financial interest, and which transactions in the aggregate involved more than fifty thousand dollars ($50,000).

(2) The names of the interested persons involved in such transactions, stating such person's relationship to the corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

(e) The statement required by subdivision (a) shall describe briefly the amount and circumstances of any indemnifications or advances aggregating more than ten thousand dollars ($10,000) paid during the fiscal year to any officer or director of the corporation pursuant to Section 5238; provided that no such report need be made in the case of indemnification approved by the members (Section 5034) under paragraph (2) of subdivision (e) of Section 5238.

SEC. 22. Section 7211 of the Corporations Code is amended to read:

7211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who provided a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of an adjournment to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication, pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger, unless the number of directors authorized in the articles or bylaws is one, in which case one director constitutes a quorum.

(8) Subject to the provisions of Sections 7212, 7233, 7234, and subdivision (e) of Section 7237 and Section 5233, insofar as it is made applicable pursuant to Section 7238, an act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as a

unanimous vote of the directors. For the purposes of this section only, ''all members of the board'' does not include an ''interested director'' as defined in Section 5233, insofar as it is made applicable pursuant to Section 7238.

(c) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

SEC. 23. Section 7215 of the Corporations Code is amended to read:

7215. The original or a copy in writing or in any other form capable of being converted into clearly legible tangible form of the bylaws or of the minutes of any incorporators', members', directors', committee or other meeting or of any resolution adopted by the board or a committee thereof, or members, certified to be a true copy by a person purporting to be the secretary or an assistant secretary of the corporation, is prima facie evidence of the adoption of such bylaws or resolution or of the due holding of such meeting and of the matters stated therein.

SEC. 24. Section 7510 of the Corporations Code is amended to read:

7510. (a) Meetings of members may be held at a place within or without this state as may be stated in or fixed in accordance with the bylaws. If no other place is stated or so fixed, meetings of members shall be held at the principal executive office of the corporation. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, members not physically present in person (or, if proxies are allowed, by proxy) at a meeting of members may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of members, be deemed present in person (or, if proxies are allowed, by proxy), and vote at a meeting of members whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (f).

(b) A regular meeting of members shall be held on a date and time, and with the frequency stated in or fixed in accordance with the bylaws, but in any event in each year in which directors are to be elected at that meeting for the purpose of conducting such election, and to transact any other proper business which may be brought before the meeting.

(c) If a corporation with members is required by subdivision (b) to hold a regular meeting and fails to hold the regular meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the formation of the corporation or after its last regular meeting, or if the corporation fails to hold a written ballot for a period of 60 days after the date designated

therefor, then the superior court of the proper county may summarily order the meeting to be held or the ballot to be conducted upon the application of a member or the Attorney General, after notice to the corporation giving it an opportunity to be heard.

(d) The votes represented, either in person (or, if proxies are allowed, by proxy), at a meeting called or by written ballot ordered pursuant to subdivision (c), and entitled to be cast on the business to be transacted shall constitute a quorum, notwithstanding any provision of the articles or bylaws or in this part to the contrary. The court may issue such orders as may be appropriate including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice of the meeting.

(e) Special meetings of members for any lawful purpose may be called by the board, the chairman of the board, the president, or such other persons, if any, as are specified in the bylaws. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members.

(f) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide members in person (or, if proxies are allowed, by proxy) a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings, and (2) if any member votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a member pursuant to clause (b) of Section 20 for consent to conduct a meeting of members by electronic transmission by and to the corporation, shall include a notice that absent consent of the member pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a).

SEC. 25. Section 7511 of the Corporations Code is amended to read:

7511. (a) Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 nor more than 90 days before the date of the meeting to each member who, on the record date for notice of the meeting, is entitled to vote thereat; provided, however, that if notice is given by mail, and the notice is not mailed by first-class, registered, or certified mail, that notice shall be given not less than 20 days before the meeting. Subject to subdivision (f), and subdivision (b) of Section 7512, the notice shall state the place, date and time of the meeting, the means of electronic transmission by and to the corporation (Sections 20 and 21) or electronic

video screen communication, if any, by which members may participate in that meeting, and (1) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be transacted, or (2) in the case of the regular meeting, those matters which the board, at the time the notice is given, intends to present for action by the members, but, except as provided in subdivision (b) of Section 7512, any proper matter may be presented at the meeting for the action. The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time the notice is given to members.

(b) Notice of a members' meeting or any report shall be given personally, by electronic transmission by a corporation, or by mail or other means of written communication, addressed to a member at the address of the member appearing on the books of the corporation or given by the member to the corporation for purpose of notice; or if no such address appears or is given, at the place where the principal office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal office is located. An affidavit of giving of any notice or report in accordance with the provisions of this part, executed by the secretary, assistant secretary or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

If any notice or report addressed to the member at the address of the member appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the member at the address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the member upon written demand of the member at the principal office of the corporation for a period of one year from the date of the giving of the notice or report to all other members.

Notice given by electronic transmission by the corporation under this subdivision shall be valid only if it complies with Section 20. Notwithstanding the foregoing, notice shall not be given by electronic transmission by the corporation under this subdivision after either of the following:

(1) The corporation is unable to deliver two consecutive notices to the member by that means.

(2) The inability to so deliver the notices to the member becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice.

(c) Upon request in writing to the corporation addressed to the attention of the chairman of the board, president, vice president, or secretary by any person (other than the board) entitled to call a special

meeting of members, the officer forthwith shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the board not less than 35 nor more than 90 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

(d) When a members' meeting is adjourned to another time or place, unless the bylaws otherwise require and except as provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof (or the means of electronic transmission by and to the corporation or electronic video screen communication, if any, by which members may participate) are announced at the meeting at which the adjournment is taken. No meeting may be adjourned for more than 45 days. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If after the adjournment a new record date is fixed for notice or voting, a notice of the adjourned meeting shall be given to each member who, on the record date for notice of the meeting, is entitled to vote at the meeting.

(e) The transactions of any meeting of members however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the persons entitled to vote, not present in person (or, if proxies are allowed, by proxy), provides a waiver of notice or consent to the holding of the meeting or an approval of the minutes thereof in writing. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this part to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, unless otherwise provided in the articles or bylaws, except as provided in subdivision (f).

(f) Any approval of the members required under Section 7222, 7224, 7233, 7812, 8610, or 8719, other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(g) A court may find that notice not given in conformity with this section is still valid, if it was given in a fair and reasonable manner.

SEC. 26. Section 7513 of the Corporations Code is amended to read:

7513. (a) Subject to subdivision (e), and unless prohibited in the articles or bylaws, any action which may be taken at any regular or special meeting of members may be taken without a meeting if the corporation distributes a written ballot to every member entitled to vote on the matter. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that ballot and any related material may be sent by electronic transmission by the corporation (Section 20) and responses may be returned to the corporation by electronic transmission to the corporation (Section 21). That ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the corporation.

(b) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) Ballots shall be solicited in a manner consistent with the requirements of subdivision (b) of Section 7511 and Section 7514. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and, with respect to ballots other than for the election of directors, shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted.

(d) Unless otherwise provided in the articles or bylaws, a written ballot may not be revoked.

(e) Directors may be elected by written ballot under this section, where authorized by the articles or bylaws, except that election by written ballot may not be authorized where the directors are elected by cumulative voting pursuant to Section 7615.

(f) When directors are to be elected by written ballot and the articles or bylaws prescribe a nomination procedure, the procedure may provide for a date for the close of nominations prior to the printing and distributing of the written ballots.

SEC. 27. Section 8320 of the Corporations Code is amended to read:

8320. (a) Each corporation shall keep:

(1) Adequate and correct books and records of account:

(2) Minutes of the proceedings of its members, board and committees of the board; and

(3) A record of its members giving their names and addresses and the class of membership held by each.

(b) Those minutes and other books and records shall be kept either in written form or in any other form capable of being converted into clearly legible tangible form or in any combination of the foregoing. When minutes and other books and records are kept in a form capable of being converted into clearly legible paper form, the clearly legible paper form into which those minutes and other books and records are converted shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided that the paper form accurately portrays the record.

SEC. 28. Section 8321 of the Corporations Code is amended to read:

8321. (a) A corporation shall notify each member yearly of the member's right to receive a financial report pursuant to this subdivision. Except as provided in subdivision (c), upon written request of a member the board shall promptly cause the most recent annual report to be sent to the requesting member. An annual report shall be prepared not later than 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material may be sent by electronic transmission by the corporation (Section 20). That report shall contain in appropriate detail the following:

(1) A balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year.

(2) A statement of the place where the names and addresses of the current members are located.

(3) Any information required by Section 8322.

(b) The report required by subdivision (a) shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation.

(c) Subdivision (a) does not apply to any corporation which receives less than ten thousand dollars ($10,000) in gross revenues or receipts during the fiscal year.

SEC. 29. Section 8322 of the Corporations Code is amended to read:

8322. (a) Any provision of the articles or bylaws notwithstanding, every corporation shall furnish annually to its members and directors a

statement of any transaction or indemnification of a kind described in subdivision (d) or (e), if any such transaction or indemnification took place. If the corporation issues an annual report to all members, this subdivision shall be satisfied by including the required information in the annual report. A corporation which does not issue an annual report to all members, pursuant to subdivision (c) of Section 8321, shall satisfy this section by mailing or delivering to its members the required statement within 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that statement may be sent by electronic transmission by the corporation (Section 20).

(b) Except as provided in subdivision (c), a covered transaction under this section is a transaction in which the corporation, its parent, or its subsidiary was a party, and in which either of the following had a direct or indirect material financial interest:

(1) Any director or officer of the corporation, or its parent or subsidiary.

(2) Any holder of more than 10 percent of the voting power of the corporation, its parent or its subsidiary.

For the purpose of subdivision (d), an ''interested person'' is any person described in paragraph (1) or (2) of this subdivision.

(c) Transactions approved by the members of a corporation (Section 5034), under subdivision (a) of Section 7233, are not covered transactions. For the purpose of subdivision (b), a mere common directorship is not a material financial interest.

(d) The statement required by subdivision (a) shall describe briefly:

(1) Any covered transaction (excluding compensation of officers and directors) during the previous fiscal year involving more than fifty thousand dollars ($50,000), or which was one of a number of covered transactions in which the same interested person had a direct or indirect material financial interest, and which transactions in the aggregate involved more than fifty thousand dollars ($50,000).

(2) The names of the interested persons involved in such transactions, stating such person's relationship to the corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

(e) The statement required by subdivision (a) shall describe briefly the amount and circumstances of any loans, guaranties, indemnifications or advances aggregating more than ten thousand dollars ($10,000) paid or made during the fiscal year to any officer or director of the corporation pursuant to Section 7237; provided that no such report need be made in the case of a loan, guaranty, or indemnification approved by the

members (Section 5034) or a loan or guaranty not subject to the provisions of subdivision (a) of Section 7235.

SEC. 30. Section 9211 of the Corporations Code is amended to read:

9211. (a) Unless otherwise provided in the articles or in the bylaws, all of the following apply:

(1) Meetings of the board may be called by the chair of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of the meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by a corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to a director who provided a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to that director. These waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place.

(5) Meetings of the board may be held at a place within or without the state that has been designated in the notice of the meeting or, if not stated in the notice or there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation. Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting, if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose,

or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business.

(8) An act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for that meeting, or a greater number as is required by this division, the articles or bylaws.

(b) An action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to that action. The written consent or consents shall be filed with the minutes of the proceedings of the board. The action by written consent shall have the same force and effect as the unanimous vote of the directors.

(c) This section applies also to incorporators, to committees of the board, and to action by those incorporators or committees mutatis mutandis.

SEC. 31. Section 9215 of the Corporations Code is amended to read:

9215. The original or a copy in writing or in any other form capable of being converted into clearly legible tangible form of the bylaws or of the minutes of any incorporators', members', directors', committee or other meeting or of any resolution adopted by the board or a committee thereof, or members, certified to be a true copy by a person purporting to be the secretary or an assistant secretary of the corporation, is prima facie evidence of the adoption of such bylaws or resolution or of the due holding of such meeting and of the matters stated therein.

SEC. 32. Section 9411 of the Corporations Code is amended to read:

9411. (a) Subject to the provisions of this chapter, regular and special meetings of members shall be called, noticed and held as may be ordered by the board. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, members not physically present in person (or, if proxies are allowed, by proxy) at a meeting of members may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of members, be deemed present in person (or, if proxies are allowed, by proxy), and vote at a meeting of members whether that meeting is to be held at a designated place or in

whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (f).

(b) Special meetings of members for any lawful purpose may be called by the board or the chairman of the board or the president. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members.

(c) Upon request in writing to the chairman of the board, president, vice president or secretary by any person (other than the board) entitled to call a special meeting of members, the board shall expeditiously set a reasonable time and place for the meeting and the officer forthwith shall cause notice to be given to the members entitled to vote of the time and place of the meeting. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote and the form of notice.

(d) The transactions of any meeting of members, however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present either in person (or, if proxies are allowed, by proxy), and if, either before or after the meeting, each of the persons entitled to vote, not present in person or by proxy, signs a written waiver of notice or a consent to the holding of the meeting or an approval of the minutes thereof. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this part to be included in the notice but not so included, if such objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof except as provided in subdivision (e).

(e) Any member approval required under subdivision (b) of Section 9150, Section 9222, Section 5812 (made applicable pursuant to Section 9620), subdivision (a) of Section 9631, subdivision (c) of Section 9640, subdivision (a) of Section 6015 (made applicable pursuant to Section 9640), or subdivision (b) of Section 9680, other than unanimous

approval by those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(f) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, and (2) if any member votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a member pursuant to clause (b) of Section 20 for consent to conduct a meeting of members by electronic transmission by and to the corporation, shall include a notice that absent consent of the member pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a).

SEC. 33. Section 9413 of the Corporations Code is amended to read:

9413. (a) Any action which may be taken at any regular or special meeting of members may be taken without a meeting if the written ballot of every member is solicited, if the required number of signed approvals in writing, setting forth the action so taken, is received, and if the requirements of subdivision (c) are satisfied. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that ballot and any related material may be sent by electronic transmission by the corporation (Section 20) and responses may be returned to the corporation by electronic transmission to the corporation (Section 21).

(b) All solicitations of ballots shall indicate the time by which the ballot must be returned to be counted.

(c) Approval by written ballot pursuant to this section shall be valid only when the number of ballots cast on or before the time the ballot must be returned to be counted equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a meeting at which the total number of votes cast was the same as the number of ballots cast.

(d) A written ballot may not be revoked.

(e) Directors may be elected by written ballot under this section, where authorized by the articles or bylaws, except that election by written ballot may not be authorized where the directors are elected by cumulative voting pursuant to Section 9415.

SEC. 34. Section 9510 of the Corporations Code is amended to read:

9510. (a) Each corporation shall keep:

(1) Adequate and correct books and records of account.

(2) Minutes of the proceedings of its members, board and committees of the board.

(3) A record of its members giving their names and addresses and the class of membership held by each.

(b) Those minutes and other books and records shall be kept either in written form or in any other form capable of being converted into clearly legible tangible form or in any combination of the foregoing. When minutes and other books and records are kept in a form capable of being converted into clearly legible paper form, the clearly legible paper form into which those minutes and other books and records are converted shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided that the paper form accurately portrays the record.

SEC. 35. Section 12254 of the Corporations Code is amended to read:

12254. ''Written'' or ''in writing'' includes facsimile, telegraphic, and other electronic communication as authorized by this code.

SEC. 36. Section 12351 of the Corporations Code is amended to read:

12351. (a) Unless otherwise provided in the articles or in the bylaws:

(1) Meetings of the board may be called by the chairman of the board or the president or any vice president or the secretary or any two directors.

(2) Regular meetings of the board may be held without notice if the time and place of such meetings are fixed by the bylaws or the board. Special meetings of the board shall be held upon four days' notice by first-class mail or 48 hours' notice delivered personally or by telephone, including a voice messaging system or by electronic transmission by the corporation (Section 20). The articles or bylaws may not dispense with notice of a special meeting. A notice, or waiver of notice, need not specify the purpose of any regular or special meeting of the board.

(3) Notice of a meeting need not be given to any director who provides a waiver of notice or consent to holding the meeting or an approval of the minutes thereof in writing, whether before or after the meeting, or who attends the meeting without protesting, prior thereto or at its commencement, the lack of notice to such director. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meetings.

(4) A majority of the directors present, whether or not a quorum is present, may adjourn any meeting to another time and place. If the meeting is adjourned for more than 24 hours, notice of any adjournment

to another time or place shall be given prior to the time of the adjourned meeting to the directors who were not present at the time of the adjournment.

(5) Meetings of the board may be held at any place within or without the state which has been designated in the notice of the meeting or, if not stated in the notice or if there is no notice, designated in the bylaws or by resolution of the board.

(6) Members of the board may participate in a meeting through use of conference telephone, electronic video screen communication, or electronic transmission by and to the corporation (Sections 20 and 21). Participation in a meeting through use of conference telephone or electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting as long as all members participating in the meeting are able to hear one another. Participation in a meeting through use of electronic transmission by and to the corporation, other than conference telephone and electronic video screen communication pursuant to this subdivision constitutes presence in person at that meeting if both of the following apply:

(A) Each member participating in the meeting can communicate with all of the other members concurrently.

(B) Each member is provided the means of participating in all matters before the board, including, without limitation, the capacity to propose, or to interpose an objection to, a specific action to be taken by the corporation.

(7) A majority of the number of directors authorized in the articles or bylaws constitutes a quorum of the board for the transaction of business. The articles or bylaws may not provide that a quorum shall be less than one-fifth the number of directors authorized in the articles or bylaws, or less than two, whichever is larger.

(8) Subject to the provisions of Sections 12352, 12373, 12374 and subdivision (e) of Section 12377, every act or decision done or made by a majority of the directors present at a meeting duly held at which a quorum is present is the act of the board. The articles or bylaws may not provide that a lesser vote than a majority of the directors present at a meeting is the act of the board. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of directors, if any action taken is approved by at least a majority of the required quorum for such meeting, or such greater number as is required by this division, the articles or bylaws.

(b) Any action required or permitted to be taken by the board may be taken without a meeting, if all members of the board shall individually or collectively consent in writing to such action. Such written consent or consents shall be filed with the minutes of the proceedings of the

board. Such action by written consent shall have the same force and effect as a unanimous vote of such directors.

(c) The provisions of this section apply also to incorporators, to committees of the board, and to action by such incorporators or such committees mutatis mutandis.

SEC. 37. Section 12355 of the Corporations Code is amended to read:

12355. The original or a copy in writing or in any other form capable of being converted into clearly legible tangible form of the bylaws or of the minutes of any incorporators', members', directors', committee or other meeting or of any resolution adopted by the board or a committee thereof, or members, certified to be a true copy by a person purporting to be the secretary or an assistant secretary of the corporation, is prima facie evidence of the adoption of such bylaws or resolution or of the due holding of such meeting and of the matters stated therein.

SEC. 38. Section 12460 of the Corporations Code is amended to read:

12460. (a) Meetings of members may be held at a place within or without this state that is stated in or fixed in accordance with the bylaws. If no other place is so stated or fixed, meetings of members shall be held at the principal executive office of the corporation. Unless prohibited by the bylaws of the corporation, if authorized by the board of directors in its sole discretion, and subject to the requirement of consent in clause (b) of Section 20 and those guidelines and procedures as the board of directors may adopt, members not physically present in person at a meeting of members may, by electronic transmission by and to the corporation (Sections 20 and 21) or by electronic video screen communication, participate in a meeting of members, be deemed present in person, and vote at a meeting of members whether that meeting is to be held at a designated place or in whole or in part by means of electronic transmission by and to the corporation or by electronic video screen communication, in accordance with subdivision (f).

(b) A regular meeting of members shall be held annually. In any year in which directors are elected, the election shall be held at the regular meeting unless the directors are chosen in some other manner authorized by law. Any other proper business may be transacted at the meeting.

(c) If a corporation fails to hold the regular meeting for a period of 60 days after the date designated therefor or, if no date has been designated, for a period of 15 months after the formation of the corporation or after its last regular meeting, or if the corporation fails to hold a written ballot for a period of 60 days after the date designated therefor, then the superior court of the proper county may summarily order the meeting to be held or the ballot to be conducted upon the application of a member, after notice to the corporation giving it an opportunity to be heard.

(d) The votes represented at a meeting called or by written ballot ordered pursuant to subdivision (c) and entitled to be cast on the business to be transacted shall constitute a quorum, notwithstanding any provision of the articles or bylaws or in this part to the contrary. The court may issue such orders as may be appropriate including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice of the meeting.

(e) Special meetings of members for any lawful purpose may be called by the board, the chairman of the board, the president, or such other persons, if any, as are specified in the bylaws. In addition, special meetings of members for any lawful purpose may be called by 5 percent or more of the members.

(f) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the corporation or by electronic video screen communication (1) if the corporation implements reasonable measures to provide members a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting concurrently with those proceedings, and (2) if any member votes or takes other action at the meeting by means of electronic transmission to the corporation or electronic video screen communication, a record of that vote or action is maintained by the corporation. Any request by a corporation to a member pursuant to clause (b) of Section 20 for consent to conduct a meeting of members by electronic transmission by and to the corporation, shall include a notice that absent consent of the member pursuant to clause (b) of Section 20, the meeting shall be held at a physical location in accordance with subdivision (a).

SEC. 39. Section 12461 of the Corporations Code is amended to read:

12461. (a) Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 nor more than 90 days before the date of the meeting to each member who, on the record date for notice of the meeting, is entitled to vote thereat; provided, however, that if notice is given by mail, and the notice is not mailed by first-class, registered, or certified mail, that notice shall be given not less than 20 days before the meeting. Subject to subdivision (f), and subdivision (b) of Section 12462, that notice shall state the place, date and time of the meeting, the means of electronic transmission by and to the corporation (Sections 20 and 21) or electronic video screen communication, if any, by which members may participate in that meeting, and (1) in the case of a special meeting, the general nature of the business to be transacted, and no other business may be

transacted, or (2) in the case of the regular meeting, those matters which the board, at the time the notice is given, intends to present for action by the members, but, except as provided in subdivision (b) of Section 12462, any proper matter may be presented at the meeting for such action. The notice of any meeting at which directors are to be elected shall include the names of all those who are nominees at the time the notice is given to members.

(b) Notice of a members' meeting or any report shall be given personally, by electronic transmission by the corporation, or by mail or other means of written communication, addressed to a member at the address of such member appearing on the books of the corporation or given by the member to the corporation for purpose of notice; or if no such address appears or is given, at the place where the principal office of the corporation is located or by publication at least once in a newspaper of general circulation in the county in which the principal office is located. An affidavit of giving of any notice or report in accordance with the provisions of this part, executed by the secretary, assistant secretary or any transfer agent, shall be prima facie evidence of the giving of the notice or report.

If any notice or report addressed to the member at the address of such member appearing on the books of the corporation is returned to the corporation by the United States Postal Service marked to indicate the United States Postal Service is unable to deliver the notice or report to the member at such address, all future notices or reports shall be deemed to have been duly given without further mailing if the same shall be available for the member upon written demand of the member at the principal office of the corporation for a period of one year from the date of the giving of the notice or report to all other members.

Notice given by electronic transmission by the corporation under this subdivision shall be valid only if it complies with Section 20. Notwithstanding the foregoing, notice shall not be given by electronic transmission by the corporation under this subdivision after either of the following:

(1) The corporation is unable to deliver two consecutive notices to the member by that means.

(2) The inability to so deliver the notices to the member becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice.

(c) Upon request in writing to the corporation addressed to the attention of the chairman of the board, president, vice president or secretary by any person (other than the board) entitled to call a special meeting of members, the officer forthwith shall cause notice to be given to the members entitled to vote that a meeting will be held at a time fixed by the board not less than 35 nor more than 90 days after the receipt of

the request. If the notice is not given within 20 days after receipt of the request, the persons entitled to call the meeting may give the notice or the superior court of the proper county shall summarily order the giving of the notice, after notice to the corporation giving it an opportunity to be heard. The court may issue such orders as may be appropriate, including, without limitation, orders designating the time and place of the meeting, the record date for determination of members entitled to vote and the form of notice.

(d) When a members' meeting is adjourned to another time or place, unless the bylaws otherwise require and except as provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof (or the means of electronic transmission by and to the corporation or electronic video screen communication, if any, by which members may participate) are announced at the meeting at which the adjournment is taken. At the adjourned meeting the corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than 45 days or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

(e) The transactions of any meeting of members however called and noticed, and wherever held, are as valid as though had at a meeting duly held after regular call and notice, if a quorum is present, and if, either before or after the meeting, each of the persons entitled to vote, not present in person, provides a waiver of notice or consent to the holding of the meeting or an approval of the minutes thereof in writing. All such waivers, consents and approvals shall be filed with the corporate records or made a part of the minutes of the meeting. Attendance of a person at a meeting shall constitute a waiver of notice of and presence at such meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened and except that attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this part to be included in the notice but not so included, if such objection is expressly made at the meeting. Neither the business to be transacted at nor the purpose of any regular or special meeting of members need be specified in any written waiver of notice, consent to the holding of the meeting or approval of the minutes thereof, unless otherwise provided in the articles or bylaws, except as provided in subdivision (f).

(f) Any approval of the members required under Section 12362, 12364, 12373, 12502 or 12658 other than unanimous approval by those entitled to vote, shall be valid only if the general nature of the proposal

so approved was stated in the notice of meeting or in any written waiver of notice.

(g) A court may find that notice not given in conformity with this section is still valid, if it was given in a fair and reasonable manner.

(h) Subject to the provisions of subdivision (i), and unless prohibited by the articles or bylaws, prior to any regular or special meeting of members, the board may authorize distribution of a written ballot to every member entitled to vote at the meeting. Such ballot shall set forth the action proposed to be taken at the meeting, shall provide an opportunity to specify approval or disapproval of the proposed action, and shall state that unless revoked by the member voting in person at the meeting, the ballot will be counted if received by the corporation on or before the time of the meeting with respect to which it was sent. If ballots are so distributed with respect to a meeting, the number of members voting at the meeting by unrevoked written ballots shall be deemed present at the meeting for purposes of determining the existence of a quorum pursuant to subdivision (a) of Section 12462 but only with respect to the proposed action referred to in the ballots. These ballots shall be distributed in a manner consistent with the requirements of subdivision (b) and Section 12464.

(i) Unless prohibited by the articles or bylaws, written ballots may be distributed in a manner contemplated by subdivision (h) with respect to the election of directors, except that no ballots may be so distributed with respect to the election of directors if cumulative voting is permitted pursuant to Section 12484.

SEC. 40. Section 12463 of the Corporations Code is amended to read:

12463. (a) Subject to subdivision (e), and unless prohibited in the articles or bylaws any action which may be taken at any regular or special meeting of members may be taken without a meeting if the corporation distributes a written ballot to every member entitled to vote on the matter. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that ballot and any related material may be sent by electronic transmission by the corporation (Section 20) and responses may be returned to the corporation by electronic transmission to the corporation (Section 21). That ballot shall set forth the proposed action, provide an opportunity to specify approval or disapproval of any proposal, and provide a reasonable time within which to return the ballot to the corporation.

(b) Approval by written ballot pursuant to this section shall be valid only when the number of votes cast by ballot within the time period specified equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve at a

meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

(c) Ballots shall be solicited in a manner consistent with the requirements of subdivision (b) of Section 12461 and Section 12464. All such solicitations shall indicate the number of responses needed to meet the quorum requirement and, with respect to ballots other than for the election of directors, shall state the percentage of approvals necessary to pass the measure submitted. The solicitation must specify the time by which the ballot must be received in order to be counted.

(d) Unless otherwise provided in the articles or bylaws, a written ballot may not be revoked.

(e) Directors may be elected by written ballot under this section, where authorized by the articles or bylaws, except that election by written ballot may not be authorized where the directors are elected by cumulative voting pursuant to Section 12484. When directors are to be elected by written ballot and the articles or bylaws prescribe a nomination procedure, the procedure may provide for a date for the close of nominations prior to printing and distributing of the written ballots.

(f) The secretary shall cause a vote to be taken by written ballot upon any action or recommendation proposed in writing by 20 percent of the members of the corporation.

SEC. 41. Section 12590 of the Corporations Code is amended to read:

12590. (a) Each corporation shall keep:

(1) Adequate and correct books and records of account;

(2) Minutes of the proceedings of its members, board, and committees of the board; and

(3) A record of its members giving their names and addresses and the class of membership and number of membership units held by each.

(b) Those minutes and other books and records shall be kept either in written form or in any other form capable of being converted into clearly legible tangible form or in any combination of the foregoing. When minutes and other books and records are kept in a form capable of being converted into clearly legible paper form, the clearly legible paper form into which those minutes and other books and records are converted shall be admissible in evidence, and accepted for all other purposes, to the same extent as an original paper record of the same information would have been, provided that the paper form accurately portrays the record.

SEC. 42. Section 12591 of the Corporations Code is amended to read:

12591. (a) A corporation shall notify each member yearly of the member's right to receive a financial report pursuant to this subdivision. Except as provided in subdivision (c), upon written request of a member the board shall promptly cause the most recent annual report to be sent

to the requesting member. An annual report shall be prepared not later than 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that report and any accompanying material sent pursuant to this section may be sent by electronic transmission by the corporation (Section 20). That report shall contain in appropriate detail the following:

(1) A balance sheet as of the end of such fiscal year and an income statement and statement of changes in financial position for such fiscal year.

(2) A statement of the place where the names and addresses of the current members are located.

(3) Any information required by Section 12592.

(b) The report required by subdivision (a) shall be accompanied by any report thereon of independent accountants, or, if there is no such report, the certificate of an authorized officer of the corporation that such statements were prepared without audit from the books and records of the corporation.

(c) This section does not apply to corporations which do not have more than 25 members at any time during the fiscal year.

SEC. 43. Section 12592 of the Corporations Code is amended to read:

12592. (a) Any provision of the articles or bylaws notwithstanding, every corporation shall furnish annually to its members and directors a statement of any transaction or indemnification of a kind described in subdivision (d) or (e), if any such transaction or indemnification took place. If the corporation issues an annual report to all members, this subdivision shall be satisfied by including the required information in the annual report. A corporation which does not issue an annual report to all members, pursuant to subdivision (c) of Section 12591, shall satisfy this section by mailing or delivering to its members the required statement within 120 days after the close of the corporation's fiscal year. Unless otherwise provided by the articles or bylaws and if approved by the board of directors, that statement may be sent by electronic transmission by the corporation (Section 20).

(b) Except as provided in subdivision (c), a covered transaction under this section is a transaction in which the corporation, its parent, or its subsidiary was a party, and in which either of the following had a direct or indirect material financial interest:

(1) Any director or officer of the corporation, or its parent or subsidiary.

(2) Any holder of more than 10 percent of the voting power of the corporation, its parent or its subsidiary.

For the purpose of subdivision (d), an ''interested person'' is any person described in paragraph (1) or (2).

(c) Transactions approved by the members of a corporation, under subdivision (a) of Section 12373, are not covered transactions. For the purpose of subdivision (b), neither a mere common directorship nor a member-patron relationship on terms available to all members constitutes a material financial interest.

(d) The statement required by subdivision (a) shall describe briefly:

(1) Any covered transaction (excluding compensation of officers and directors) during the previous fiscal year involving more than one thousand dollars ($1,000), or which was one of a number of covered transactions in which the same interested person had a direct or indirect material financial interest, and which transactions in the aggregate involved more than one thousand dollars ($1,000).

(2) The names of the interested persons involved in such transactions, stating such person's relationship to the corporation, the nature of such person's interest in the transaction and, where practicable, the amount of such interest; provided, that in the case of a transaction with a partnership of which such person is a partner, only the interest of the partnership need be stated.

(e) The statement required by subdivision (a) shall describe briefly the amount and circumstances of any loans, guaranties, indemnifications, or advances aggregating more than one thousand dollars ($1,000) paid or made during the fiscal year to any officer or director of the corporation pursuant to Section 12377; provided that no such report need be made in the case of a loan, guaranty, or indemnification approved by the members under paragraph (2) of subdivision (e) of Section 12377 or a loan or guaranty not subject to the provisions of subdivision (a) of Section 12375.

SEC. 44. Section 16101 of the Corporations Code is amended to read:

16101. As used in this chapter, the following terms and phrases have the following meanings:

(1) ''Business'' includes every trade, occupation, and profession.

(2) ''Debtor in bankruptcy'' means a person who is the subject of either of the following:

(A) An order for relief under Title 11 of the United States Code or a comparable order under a successor statute of general application.

(B) A comparable order under federal, state, or foreign law governing insolvency.

(3) ''Distribution'' means a transfer of money or other property from a partnership to a partner in the partner's capacity as a partner or to the partner's transferee.

(4) ''Electronic transmission by the partnership'' means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a partnership to an individual partner is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

(5) ''Electronic transmission to the partnership'' means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the partnership has provided from time to time to partners for sending communications to the partnership, (2) posting on an electronic message board or network that the partnership has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the partnership has placed in effect reasonable measures to verify that the sender is the partner (in person or by proxy) purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(6) (A) ''Foreign limited liability partnership'' means a partnership, other than a limited partnership, formed pursuant to an agreement governed by the laws of another jurisdiction and denominated or registered as a limited liability partnership or registered limited liability partnership under the laws of that jurisdiction (i) in which each partner is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) which is licensed under the laws of the state to engage in the practice of architecture, the practice of public accountancy, or the practice of law, or (iii) which (I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related

or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, except an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(7) ''Licensed person'' means any person who is duly licensed, authorized, or registered under the provisions of the Business and Professions Code to provide professional limited liability partnership services or who is lawfully able to render professional limited liability partnership services in this state.

(8) (A) ''Registered limited liability partnership'' means a partnership, other than a limited partnership, formed pursuant to an agreement governed by Article 10 (commencing with Section 16951), that is registered under Section 16953 and (i) each of the partners of which is a licensed person or a person licensed or authorized to provide professional limited liability partnership services in a jurisdiction or jurisdictions other than this state, (ii) is licensed under the laws of the state to engage in the practice of architecture, practice of public accountancy, or the practice of law, or (iii)(I) is related to a registered limited liability partnership that practices public accountancy or, to the extent permitted by the State Bar, practices law or is related to a foreign limited liability partnership and (II) provides services related or complementary to the professional limited liability partnership services provided by, or provides services or facilities to, that registered limited liability partnership or foreign limited liability partnership.

(B) For the purposes of clause (iii) of subparagraph (A), a partnership is related to a registered limited liability partnership or foreign limited liability partnership if (i) at least a majority of the partners in one partnership are also partners in the other partnership, or (ii) at least a majority in interest in each partnership hold interests in or are members of another person, other than an individual, and each partnership renders services pursuant to an agreement with that other person, or (iii) one partnership, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the other partnership.

(9) ''Partnership'' means an association of two or more persons to carry on as coowners a business for profit formed under Section 16202, predecessor law, or comparable law of another jurisdiction, and includes, for all purposes of the laws of this state, a registered limited liability partnership, and excludes any partnership formed under Chapter 2 (commencing with Section 15501) or Chapter 3 (commencing with Section 15611).

(10) ''Partnership agreement'' means the agreement, whether written, oral, or implied, among the partners concerning the partnership, including amendments to the partnership agreement.

(11) ''Partnership at will'' means a partnership in which the partners have not agreed to remain partners until the expiration of a definite term or the completion of a particular undertaking.

(12) ''Partnership interest'' or ''partner's interest in the partnership'' means all of a partner's interests in the partnership, including the partner's transferable interest and all management and other rights.

(13) ''Person'' means an individual, corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or any other legal or commercial entity.

(14) ''Professional limited liability partnership services'' means the practice of architecture, the practice of public accountancy, or the practice of law.

(15) ''Property'' means all property, real, personal, or mixed, tangible or intangible, or any interest therein.

(16) ''State'' means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or insular possession subject to the jurisdiction of the United States.

(17) ''Statement'' means a statement of partnership authority under Section 16303, a statement of denial under Section 16304, a statement of dissociation under Section 16704, a statement of dissolution under Section 16805, a statement of conversion or a certificate of conversion under Section 16906, a statement of merger under Section 16915, or an amendment or cancellation of any of the foregoing.

(18) ''Transfer'' includes an assignment, conveyance, lease, mortgage, deed, and encumbrance.

(19) The inclusion of the practice of architecture as a professional limited liability partnership service permitted by this section shall extend only until January 1, 2007.

SEC. 45. Section 16403 of the Corporations Code is amended to read:

16403. (a) A partnership shall keep its books and records, if any, in writing or in any other form capable of being converted into clearly legible tangible form, at its chief executive office.

(b) A partnership shall provide partners and their agents and attorneys access to its books and records. It shall provide former partners and their agents and attorneys access to books and records pertaining to the period during which they were partners. The right of access provides the opportunity to inspect and copy books and records during ordinary business hours. A partnership may impose a reasonable charge, covering the costs of labor and material, for copies of documents furnished.

(c) Each partner and the partnership shall furnish to a partner, and to the legal representative of a deceased partner or partner under legal disability, both of the following, which may be transmitted by electronic transmission by the partnership (subdivision (4) of Section 16101):

(1) Without demand, any information concerning the partnership's business and affairs reasonably required for the proper exercise of the partner's rights and duties under the partnership agreement or this chapter; and

(2) On demand, any other information concerning the partnership's business and affairs, except to the extent the demand or the information demanded is unreasonable or otherwise improper under the circumstances.

SEC. 46. Section 17001 of the Corporations Code is amended to read:

17001. Unless the context otherwise indicates, the following definitions govern the construction of this title:

(a) ''Acknowledged'' means that an instrument is either of the following:

(1) Formally acknowledged as provided in Article 3 (commencing with Section 1180) of Chapter 4 of Title 4 of Part 4 of Division 2 of the Civil Code.

(2) Executed to include substantially the following wording preceding the signature: It is hereby declared that I am the person who executed this instrument, which execution is my act and deed.

Any certificate of acknowledgment taken without this state before a notary public or a judge or clerk of a court of record having an official seal need not be further authenticated.

(b) ''Articles of organization'' means articles of organization filed under Section 17050, including all amendments thereto or restatements thereof, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized.

(c) ''Bankrupt'' or ''bankruptcy'' means, with respect to any person, being the subject of an order for relief under Title 11 of the United States

Code, or any successor statute or other statute in any foreign jurisdiction having like import or effect.

(d) ''Capital account'' means, unless otherwise provided in the operating agreement, the amount of the capital interest of a member in the limited liability company consisting of that member's original contribution, as (1) increased by any additional contributions and by that member's share of the limited liability company's profits, and (2) decreased by any distribution to that member and by that member's share of the limited liability company's losses.

(e) ''Constituent limited liability company'' means a limited liability company that is merged with or into one or more other limited liability companies or other business entities and includes a surviving limited liability company.

(f) ''Constituent other business entity'' means any other business entity that is merged with or into one or more limited liability companies and includes a surviving other business entity.

(g) ''Contribution'' means any money, property, or services rendered, or a promissory note or other binding obligation to contribute money or property, or to render services as permitted in this title, which a member contributes to a limited liability company as capital in that member's capacity as a member pursuant to an agreement between the members, including an agreement as to value.

(h) ''Disappearing limited liability company'' means a constituent limited liability company that is not the surviving limited liability company.

(i) ''Disappearing other business entity'' means a constituent other business entity that is not the surviving other business entity.

(j) ''Distribution'' means the transfer of money or property by a limited liability company to its members without consideration.

(k) ''Domestic'' means organized under the laws of this state when used in relation to any limited liability company, other business entity or person (other than a natural person).

(*l*) ''Domestic corporation'' means a corporation as defined in Section 162.

(m) ''Domestic limited partnership'' means a partnership formed by two or more persons under the laws of this state and having one or more general partners and one or more limited partners.

(n) ''Economic interest'' means a person's right to share in the income, gains, losses, deductions, credit, or similar items of, and to receive distributions from, the limited liability company, but does not include any other rights of a member, including, without limitation, the right to vote or to participate in management, or, except as provided in Section 17106, any right to information concerning the business and affairs of the limited liability company.

(o) (1) ''Electronic transmission by the limited liability company'' means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, for that recipient on record with the limited liability company, (2) posting on an electronic message board or network that the limited liability company has designated for those communications, together with a separate notice to the recipient of the posting, which transmission shall be validly delivered upon the later of the posting or delivery of the separate notice thereof, or (3) other means of electronic communication, (b) to a recipient who has provided an unrevoked consent to the use of those means of transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form. However, an electronic transmission by a limited liability company to an individual member is not authorized unless, in addition to satisfying the requirements of this section, the transmission satisfies the requirements applicable to consumer consent to electronic records as set forth in the Electronic Signatures in Global and National Commerce Act (15 U.S.C. Sec. 7001(c)(1)).

(2) ''Electronic transmission to the limited liability company'' means a communication (a) delivered by (1) facsimile telecommunication or electronic mail when directed to the facsimile number or electronic mail address, respectively, which the limited liability company has provided from time to time to members or managers for sending communications to the limited liability company, (2) posting on an electronic message board or network that the limited liability company has designated for those communications, and which transmission shall be validly delivered upon the posting, or (3) other means of electronic communication, (b) as to which the limited liability company has placed in effect reasonable measures to verify that the sender is the member or manager (in person or by proxy) purporting to send the transmission, and (c) that creates a record that is capable of retention, retrieval, and review, and that may thereafter be rendered into clearly legible tangible form.

(p) ''Foreign corporation'' means a corporation formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(q) ''Foreign limited liability company'' means either (1) an entity formed under the limited liability company laws of any state other than this state, or (2) an entity organized under the laws of any foreign country that is (A) an unincorporated association, (B) organized under a statute pursuant to which an association may be formed that affords each of its members limited liability with respect to the liabilities of the entity, and (C) not an entity that is required to be registered or qualified pursuant to the provisions of Title 1 (commencing with Section 100) or Title 2

(commencing with Section 15001); but the term ''foreign limited liability company'' does not include a foreign association, as defined in Section 170.

(r) ''Foreign limited partnership'' means a partnership formed under the laws of any state other than this state or under the laws of a foreign country and having as partners one or more general partners and one or more limited partners or their equivalents under any name.

(s) ''Foreign other business entity'' means any other business entity formed under the laws of any state other than this state or under the laws of the United States or of a foreign country.

(t) ''Limited liability company'' or ''domestic limited liability company'' means an entity having one or more members that is organized under this title and is subject to the provisions of Section 17101.

(u) ''Mail'' unless otherwise provided in the operating agreement, means first-class mail, postage prepaid, unless registered mail is specified. Registered mail includes certified mail.

(v) ''Majority in interest of the members,'' unless otherwise provided in the operating agreement, means more than 50 percent of the interests of members in current profits of the limited liability company.

(w) ''Manager'' means a person elected by the members of a limited liability company to manage the limited liability company if the articles of organization contain the statement referred to in subdivision (b) of Section 17151 or, if the articles of organization do not contain that statement, ''manager'' means each of the members of the limited liability company.

(x) ''Member'' means a person who:

(1) Has been admitted to a limited liability company as a member in accordance with the articles of organization or operating agreement, or an assignee of an interest in a limited liability company who has become a member pursuant to Section 17303.

(2) Has not resigned, withdrawn, or been expelled as a member or, if other than an individual, been dissolved.

(y) ''Member of record'' means a member named as a member on the list maintained in accordance with paragraph (1) of subdivision (a) of Section 17058.

(z) ''Membership interest'' means a member's rights in the limited liability company, collectively, including the member's economic interest, any right to vote or participate in management, and any right to information concerning the business and affairs of the limited liability company provided by this title.

(aa) ''Officer'' means any person elected or appointed pursuant to Section 17154.

(ab) ''Operating agreement'' means any agreement, written or oral, between all of the members as to the affairs of a limited liability company and the conduct of its business in any manner not inconsistent with law or the articles of organization, including all amendments thereto, or, in the case of a foreign limited liability company, all documents that serve a like function under the laws of the jurisdiction in which the foreign limited liability company is organized. The term ''operating agreement'' may include, without more, an agreement between all the members to organize a limited liability company pursuant to the provisions of this title.

(ac) ''Other business entity'' means a corporation, limited partnership, general partnership, business trust, real estate investment trust, or an unincorporated association (other than a nonprofit association), but excluding a domestic limited liability company and a foreign limited liability company.

(ad) ''Parent,'' when used in relation to a specified limited liability company, means a person who owns, directly or indirectly, membership interests possessing more than 50 percent of the voting power of the specified limited liability company. When used in relation to a specified corporation or limited partnership, the term ''parent'' shall have the meanings set forth in Section 1200 and subdivision (v) of Section 15611, respectively.

(ae) ''Person'' means an individual, partnership, limited partnership, trust, estate, association, corporation, limited liability company, or other entity, whether domestic or foreign.

(af) [RESERVED]

(ag) [RESERVED]

(ah) [RESERVED]

(ai) ''Proxy,'' unless otherwise provided in the operating agreement, means a written authorization signed or an electronic transmission authorized by a member or the member's attorney-in-fact giving another person the power to exercise the voting rights of that member. ''Signed,'' for the purpose of this section, means the placing of the member's name on the proxy (whether by manual signature, typewriting, telegraphic or electronic transmission, or otherwise) by the member or member's attorney-in-fact.

A proxy may be transmitted by an oral telephonic transmission if it is submitted with information from which it may be determined that the proxy was authorized by the member, or by the member's attorney-in-fact.

(aj) ''Return of capital,'' unless otherwise provided in the operating agreement, means any distribution to a member to the extent that the member's capital account, immediately after the distribution, is less than

the amount of that member's contributions to the limited liability company as reduced by prior distributions that were a return of capital.

(ak) ''State'' means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(a*l*) ''Subsidiary of a specified limited liability company'' means a limited liability company or other business entity in which shares, interests, or other securities possessing more than 50 percent of the voting power are owned by the specified limited liability company.

(am) ''Surviving limited liability company'' means a limited liability company into which one or more other limited liability companies or other business entities are merged.

(an) ''Surviving other business entity'' means an other business entity into which one or more limited liability companies are merged.

(ao) ''Time a notice is given or sent,'' unless otherwise expressly provided, means the time a written notice is deposited in the United States mail; is personally delivered to the recipient, is delivered to a common carrier for transmission, or is actually transmitted by the person giving the notice by electronic transmission, to the recipient; or the time any oral notice is communicated, in person or by telephone, to the recipient or to a person at the office of the recipient who the person giving the notice has reason to believe will promptly communicate it to the recipient.

(ap) ''Transact intrastate business'' means to enter into repeated and successive transactions of business in this state, other than in interstate or foreign commerce.

(1) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business merely because its subsidiary transacts intrastate business, or merely because of its status as any one or more of the following:

(A) A shareholder of a domestic corporation.

(B) A shareholder of a foreign corporation transacting intrastate business.

(C) A limited partner of a foreign limited partnership transacting intrastate business.

(D) A limited partner of a domestic limited partnership.

(E) A member or manager of a foreign limited liability company transacting intrastate business.

(F) A member or manager of a domestic limited liability company.

(2) Without excluding other activities which may not be considered to be transacting intrastate business, a foreign limited liability company shall not be considered to be transacting intrastate business within the meaning of this subdivision solely by reason of carrying on in this state any one or more of the following activities:

(A) Maintaining or defending any action or suit or any administrative or arbitration proceeding, or effecting the settlement thereof, or the settlement of claims or disputes.

(B) Holding meetings of its managers or members or carrying on any other activities concerning its internal affairs.

(C) Maintaining bank accounts.

(D) Maintaining offices or agencies for the transfer, exchange, and registration of the foreign limited liability company's securities or maintaining trustees or depositaries with respect to those securities.

(E) Effecting sales through independent contractors.

(F) Soliciting or procuring orders, whether by mail or through employees or agents or otherwise, where those orders require acceptance without this state before becoming binding contracts.

(G) Creating or acquiring evidences of debt or mortgages, liens, or security interests in real or personal property.

(H) Securing or collecting debts or enforcing mortgages and security interests in property securing the debts.

(I) Conducting an isolated transaction that is completed within 180 days and not in the course of a number of repeated transactions of a like nature.

(3) A person shall not be deemed to be transacting intrastate business in this state merely because of its status as a member or manager of a domestic limited liability company or a foreign limited liability company registered to transact intrastate business in this state.

(aq) ''Vote'' includes authorization by written consent.

(ar) ''Voting power'' means the power to vote on any matter at the time any determination of voting power is made and does not include the right to vote upon the happening of some condition or event which has not yet occurred.

(as) ''Withdrawal'' includes the resignation or retirement of a member as a member.

(at) ''Written'' or ''in writing'' includes facsimile, telegraphic, and other electronic communication as authorized by this code.

SEC. 47. Section 17058 of the Corporations Code is amended to read:

17058. (a) Each limited liability company shall maintain in writing or in any other form capable of being converted into clearly legible tangible form at the office referred to in subdivision (a) of Section 17057 all of the following:

(1) A current list of the full name and last known business or residence address of each member and of each holder of an economic interest in the limited liability company set forth in alphabetical order, together with the contribution and the share in profits and losses of each member and holder of an economic interest.

(2) If the articles of organization contain the statement described in subdivision (b) of Section 17151, a current list of the full name and business or residence address of each manager.

(3) A copy of the articles of organization and all amendments thereto, together with any powers of attorney pursuant to which the articles of organization or any amendments thereto were executed.

(4) Copies of the limited liability company's federal, state, and local income tax or information returns and reports, if any, for the six most recent taxable years.

(5) A copy of the limited liability company's operating agreement, if in writing, and any amendments thereto, together with any powers of attorney pursuant to which any written operating agreement or any amendments thereto were executed.

(6) Copies of the financial statements of the limited liability company, if any, for the six most recent fiscal years.

(7) The books and records of the limited liability company as they relate to the internal affairs of the limited liability company for at least the current and past four fiscal years.

(b) Upon request of an assessor, a domestic or foreign limited liability company owning, claiming, possessing, or controlling property in this state subject to local assessment shall make available at the limited liability company's principal office in California or at the office required to be kept pursuant to subdivision (a) of Section 17057 or at a place mutually acceptable to the assessor and the limited liability company, a true copy of business records relevant to the amount, cost, and value of all property that it owns, claims, possesses, or controls within the county.

SEC. 48. Section 17104 of the Corporations Code is amended to read:

17104. (a) Meetings of members may be held at any place, by electronic video screen communication or by electronic transmission by and to the limited liability company (paragraphs (1) and (2) of subdivision (o) of Section 17001), either within or without this state, selected by the person or persons calling the meeting or as may be stated in or fixed in accordance with the articles of organization or a written operating agreement. If no other place is stated or so fixed, all meetings shall be held at the principal executive office of the limited liability company. Unless prohibited by the articles of organization of the limited liability company, if authorized by the operating agreement, members not physically present in person or by proxy at a meeting of members may, by electronic transmission by and to the limited liability company (paragraphs (1) and (2) of subdivision (o) of Section 17001) or by electronic video screen communication, participate in a meeting of members, be deemed present in person or by proxy, and vote at a meeting of members whether that meeting is to be held at a designated place or

in whole or in part by means of electronic transmission by and to the limited liability company or by electronic video screen communication, in accordance with subdivision (*l*).

(b) A meeting of the members may be called by any manager or by any member or members representing more than 10 percent of the interests of members for the purpose of addressing any matters on which the members may vote.

(c) (1) Whenever members are required or permitted to take any action at a meeting, a written notice of the meeting shall be given not less than 10 days nor more than 60 days before the date of the meeting to each member entitled to vote at the meeting. The notice shall state the place, date, and hour of the meeting, the means of electronic transmission by and to the limited liability company or electronic video screen communication, if any, and the general nature of the business to be transacted. No other business may be transacted at this meeting.

(2) Any report or any notice of a members' meeting shall be given personally, by electronic transmission by the limited liability company, or by mail or other means of written communication, addressed to the member at the address of the member appearing on the books of the limited liability company or given by the member to the limited liability company for the purpose of notice, or, if no address appears or is given, at the place where the principal executive office of the limited liability company is located or by publication at least once in a newspaper of general circulation in the county in which the principal executive office is located. The notice or report shall be deemed to have been given at the time when delivered personally, or delivered by electronic transmission by the limited liability company, or deposited in the mail or sent by other means of written communication. An affidavit of mailing or delivered by electronic transmission by the limited liability company of any notice or report in accordance with the provisions of this article, executed by a manager, shall be prima facie evidence of the giving of the notice or report.

If any notice or report addressed to the member at the address of the member appearing on the books of the limited liability company is returned to the limited liability company by the United States Postal Service marked to indicate that the United States Postal Service is unable to deliver the notice or report to the member at the address, all future notices or reports shall be deemed to have been duly given without further mailing if they are available for the member at the principal executive office of the limited liability company for a period of one year from the date of the giving of the notice or report to all other members.

Notice given by electronic transmission by the limited liability company under this subdivision shall be valid only if it complies with paragraph (1) of subdivision (o) of Section 17001. Notwithstanding the

foregoing, notice shall not be given by electronic transmission by the limited liability company under this subdivision after either of the following:

(A) The limited liability company is unable to deliver two consecutive notices to the member by that means.

(B) The inability to so deliver the notices to the member becomes known to the secretary, any assistant secretary, the transfer agent, or other person responsible for the giving of the notice.

(3) Upon written request to a manager by any person entitled to call a meeting of members, the manager shall immediately cause notice to be given to the members entitled to vote that a meeting will be held at a time requested by the person calling the meeting, not less than 10 days nor more than 60 days after the receipt of the request. If the notice is not given within 20 days after receipt of the request, the person entitled to call the meeting may give the notice or, upon the application of that person, the superior court of the county in which the principal executive office of the limited liability company is located, or if the principal executive office is not in this state, the county in which the limited liability company's address in this state is located, shall summarily order the giving of the notice, after notice to the limited liability company affording it an opportunity to be heard. The procedure provided in subdivision (c) of Section 305 shall apply to the application. The court may issue any order as may be appropriate, including, without limitation, an order designating the time and place of the meeting, the record date for determination of members entitled to vote, and the form of notice.

(d) When a members' meeting is adjourned to another time or place, unless the articles of organization or a written operating agreement otherwise require and, except as provided in this subdivision, notice need not be given of the adjourned meeting if the time and place thereof or the means of electronic transmission by and to the limited liability company or electronic video screen communication, if any, are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the limited liability company may transact any business that may have been transacted at the original meeting. If the adjournment is for more than 45 days, or if after the adjournment a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given to each member of record entitled to vote at the meeting.

(e) The actions taken at any meeting of members, however called and noticed, and wherever held, have the same validity as if taken at a meeting duly held after regular call and notice, if a quorum is present either in person or by proxy, and if, either before or after the meeting, each of the members entitled to vote, not present in person or by proxy,

provides a waiver of notice or consents to the holding of the meeting or approves the minutes of the meeting in writing. All waivers, consents, and approvals shall be filed with the limited liability company records or made a part of the minutes of the meeting after conversion to the form in which those records or minutes are kept. Attendance of a person at a meeting shall constitute a waiver of notice of the meeting, except when the person objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Attendance at a meeting is not a waiver of any right to object to the consideration of matters required by this title to be included in the notice but not so included, if the objection is expressly made at the meeting. Neither the business to be transacted nor the purpose of any meeting of members need be specified in any written waiver of notice, unless otherwise provided in the articles of organization or operating agreement, except as provided in subdivision (g).

(f) Members may participate in a meeting of the limited liability company through the use of conference telephones or electronic video screen communication, as long as all members participating in the meeting can hear one another, or by electronic transmission by and to the limited liability company pursuant to paragraphs (1) and (2) of subdivision (o) of Section 17001. Participation in a meeting pursuant to this provision constitutes presence in person at that meeting.

(g) Any action approved at a meeting, other than by unanimous approval of those entitled to vote, shall be valid only if the general nature of the proposal so approved was stated in the notice of meeting or in any written waiver of notice.

(h) (1) A majority in interest of the members represented in person or by proxy shall constitute a quorum at a meeting of members.

(2) The members present at a duly called or held meeting at which a quorum is present may continue to transact business until adjournment, notwithstanding the loss of a quorum, if any action taken after loss of a quorum, other than adjournment, is approved by the requisite percentage of interests of members specified in this title or in the articles of organization or a written operating agreement.

(3) In the absence of a quorum, any meeting of members may be adjourned from time to time by the vote of a majority of the interests represented either in person or by proxy, but no other business may be transacted, except as provided in paragraph (2).

(i) (1) Any action that may be taken at any meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed and delivered to the limited liability company within 60 days of the record date for that action by members having not less than the minimum number of votes that would be necessary to

authorize or take that action at a meeting at which all members entitled to vote thereon were present and voted.

(2) Unless the consents of all members entitled to vote have been solicited in writing, (A) notice of any member approval of an amendment to the articles of organization or operating agreement, a dissolution of the limited liability company as provided in Section 17350, or a merger of the limited liability company as provided in Section 17551, without a meeting by less than unanimous written consent shall be given at least 10 days before the consummation of the action authorized by such approval, and (B) prompt notice shall be given of the taking of any other action approved by members without a meeting by less than unanimous written consent, to those members entitled to vote who have not consented in writing.

(3) Any member giving a written consent, or the member's proxyholder, may revoke the consent personally or by proxy by a writing received by the limited liability company prior to the time that written consents of members having the minimum number of votes that would be required to authorize the proposed action have been filed with the limited liability company, but may not do so thereafter. This revocation is effective upon its receipt at the office of the limited liability company required to be maintained pursuant to Section 17057.

(j) The use of proxies in connection with this section will be governed in the same manner as in the case of corporations formed under the General Corporation Law.

(k) In order that the limited liability company may determine the members of record entitled to notices of any meeting or to vote, or entitled to receive any distribution or to exercise any rights in respect of any other lawful action, a manager, or members representing more than 10 percent of the interests of members, may fix, in advance, a record date, that is not more than 60 days nor less than 10 days prior to the date of the meeting and not more than 60 days prior to any other action. If no record date is fixed:

(1) The record date for determining members entitled to notice of or to vote at a meeting of members shall be at the close of business on the business day next preceding the day on which notice is given or, if notice is waived, at the close of business on the business day next preceding the day on which the meeting is held.

(2) The record date for determining members entitled to give consent to limited liability company action in writing without a meeting shall be the day on which the first written consent is given.

(3) The record date for determining members for any other purpose shall be at the close of business on the day on which the managers adopt the resolution relating thereto, or the 60th day prior to the date of the other action, whichever is later.

(4) The determination of members of record entitled to notice of or to vote at a meeting of members shall apply to any adjournment of the meeting unless a manager or the members who called the meeting fix a new record date for the adjourned meeting, but the manager or the members who called the meeting shall fix a new record date if the meeting is adjourned for more than 45 days from the date set for the original meeting.

(*l*) A meeting of the members may be conducted, in whole or in part, by electronic transmission by and to the limited liability company or by electronic video screen communication (1) if the limited liability company implements reasonable measures to provide members (in person or by proxy) a reasonable opportunity to participate in the meeting and to vote on matters submitted to the members, including an opportunity to read or hear the proceedings of the meeting substantially concurrently with those proceedings, and (2) if any member votes or takes other action at the meeting by means of electronic transmission to the limited liability company or electronic video screen communication, a record of that vote or action is maintained by the limited liability company.

SEC. 49. Section 17106 of the Corporations Code is amended to read:

17106. (a) Upon the request of a member or a holder of an economic interest, for purposes reasonably related to the interest of that person as a member or a holder of an economic interest, a manager shall promptly deliver, in writing, to the member or holder of an economic interest, at the expense of the limited liability company, a copy of the information required to be maintained by paragraphs (1), (2), and (4) of subdivision (a) of Section 17058, and any written operating agreement of the limited liability company.

(b) Each member, manager, and holder of an economic interest has the right upon reasonable request, for purposes reasonably related to the interest of that person as a member, manager, or holder of an economic interest, to each of the following:

(1) To inspect and copy during normal business hours any of the records required to be maintained by Section 17058.

(2) To obtain in writing from the limited liability company promptly after becoming available, a copy of the limited liability company's federal, state, and local income tax or information returns for each year.

(c) In the case of any limited liability company with more than 35 members:

(1) A manager shall cause an annual report to be sent to each of the members not later than 120 days after the close of the fiscal year. That report, which may be sent by electronic transmission by the limited liability company (paragraph (1) of subdivision (o) of Section 17001),

shall contain a balance sheet as of the end of the fiscal year and an income statement and statement of changes in financial position for the fiscal year.

(2) Members representing at least 5 percent of the voting interests of members, or three or more members, may make a written request to a manager for an income statement of the limited liability company for the initial three-month, six-month, or nine-month period of the current fiscal year ended more than 30 days prior to the date of the request, and a balance sheet of the limited liability company as of the end of that period. The statement shall be delivered or mailed to the members within 30 days thereafter.

(3) The financial statements referred to in this section shall be accompanied by the report thereon, if any, of the independent accountants engaged by the limited liability company or, if there is no report, the certificate of a manager of the limited liability company that the financial statements were prepared without audit from the books and records of the limited liability company.

(d) A manager shall promptly furnish to a member a copy of any amendment to the articles of organization or operating agreement executed by a manager pursuant to a power of attorney from the member. The articles of organization or operating agreement may be sent by electronic transmission by the limited liability company.

(e) The limited liability company shall send or cause information to be sent in writing to each member or holder of an economic interest within 90 days after the end of each taxable year such information as is necessary to complete federal and state income tax or information returns, and, in the case of a limited liability company with 35 or fewer members, a copy of the limited liability company's federal, state, and local income tax or information returns for the year.

(f) In addition to any other remedies, a court of competent jurisdiction may enforce the duty of making and mailing or delivering the information and financial statements required by this section and, for good cause shown, may extend the time therefor.

(g) In any action under this section, if the court finds the failure of the limited liability company to comply with the requirements of this section is without justification, the court may award an amount sufficient to reimburse the person bringing the action for the reasonable expenses incurred by that person, including attorneys' fees, in connection with the action or proceeding.

(h) Any waiver of the rights provided in this section shall be unenforceable.

(i) Any request, inspection, or copying by a member or holder of an economic interest may be made by that person or by that person's agent or attorney.

CHAPTER 255

An act to amend Sections 51430, 51440, and 51442 of, to amend the heading of Article 3.5 (commencing with Section 51430) of, and to repeal the heading of Article 4 (commencing with Section 51440) of, Chapter 3 of Part 28 of, and to repeal Section 51441 of, the Education Code, relating to public schools.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. The heading of Article 3.5 (commencing with Section 51430) of Chapter 3 of Part 28 of the Education Code is amended to read:

Article 3.5. Retroactive High School Diplomas

SEC. 2. Section 51430 of the Education Code is amended to read:

51430. (a) Notwithstanding any other provision of law, a high school district, unified school district, or county office of education, may retroactively grant a high school diploma to a person who has not received a high school diploma if he or she meets either of the following conditions:

(1) The person was interned by order of the federal government during World War II and was enrolled in a high school operated by the school district or under the jurisdiction of the county office of education immediately preceding his or her internment and did not receive a high school diploma because his or her education was interrupted due to his or her internment during World War II.

(2) The person is a veteran of World War II, the Korean War, or the Vietnam War , was honorably discharged from his or her military service, was enrolled in a high school operated by the school district or under the jurisdiction of the county office of education immediately preceeding his or her military service in those wars, and did not receive a high school diploma because his or her education was interrupted due to his or her military service in those wars.

(b) A high school district, unified school district, or county office of education may retroactively grant a high school diploma to a deceased

person who meets the conditions of paragraph (1) or (2) of subdivision (a), to be received by the next of kin of the deceased person.

SEC. 3. The heading of Article 4 (commencing with Section 51440) of Chapter 3 of Part 28 of the Education Code is repealed.

SEC. 4. Section 51440 of the Education Code is amended to read:

51440. (a) (1) Notwithstanding any other provision of law, subject to regulations that the state board shall prescribe, a high school district, unified school district, or county office of education maintaining a four-year high school or senior high school, may, for a person who has not received a high school diploma included in paragraph (2), evaluate classes completed in any high school, community college, or state college; grant credit toward graduation for military service and training received while in the military service of the United States, and if satisfied that that person has completed the equivalent of the requirements for graduation from high school, grant him or her a diploma of graduation.

(2) Persons who may be granted a diploma pursuant to paragraph (1) are:

(A) A former member of the Armed Forces who is a resident of this state and who has received an honorable discharge.

(B) A member of the Armed Forces who is, and on the date he or she entered the Armed Forces was, a resident of this state.

(b) A veteran who entered the military service of the United States while a pupil in grade 12 of a high school and who at the time of his or her entrance into military service had satisfactorily completed the first half of the work required for grade 12 shall be granted a diploma of graduation from that high school.

SEC. 5. Section 51441 of the Education Code is repealed.

SEC. 6. Section 51442 of the Education Code is amended to read:

51442. For purposes of this article, ''veteran'' means a person who has served 90 days or more in the military service of the United States during a war with a foreign power or during any national emergency declared by the President of the United States and who has received an honorable discharge from that service.

CHAPTER 256

An act to add Section 6718 to the Government Code, relating to state observances.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 6718 is added to the Government Code, to read:

6718. The Governor shall proclaim the month of February as Black History Month each year.

CHAPTER 257

An act to amend Section 54954 of the Government Code, relating to school districts.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 54954 of the Government Code is amended to read:

54954. (a) Each legislative body of a local agency, except for advisory committees or standing committees, shall provide, by ordinance, resolution, bylaws, or by whatever other rule is required for the conduct of business by that body, the time and place for holding regular meetings. Meetings of advisory committees or standing committees, for which an agenda is posted at least 72 hours in advance of the meeting pursuant to subdivision (a) of Section 54954.2, shall be considered for purposes of this chapter as regular meetings of the legislative body.

(b) Regular and special meetings of the legislative body shall be held within the boundaries of the territory over which the local agency exercises jurisdiction, except to do any of the following:

(1) Comply with state or federal law or court order, or attend a judicial or administrative proceeding to which the local agency is a party.

(2) Inspect real or personal property which cannot be conveniently brought within the boundaries of the territory over which the local agency exercises jurisdiction provided that the topic of the meeting is limited to items directly related to the real or personal property.

(3) Participate in meetings or discussions of multiagency significance that are outside the boundaries of a local agency's jurisdiction. However, any meeting or discussion held pursuant to this subdivision shall take place within the jurisdiction of one of the participating local agencies and be noticed by all participating agencies as provided for in this chapter.

(4) Meet in the closest meeting facility if the local agency has no meeting facility within the boundaries of the territory over which the local agency exercises jurisdiction, or at the principal office of the local agency if that office is located outside the territory over which the agency exercises jurisdiction.

(5) Meet outside their immediate jurisdiction with elected or appointed officials of the United States or the State of California when a local meeting would be impractical, solely to discuss a legislative or regulatory issue affecting the local agency and over which the federal or state officials have jurisdiction.

(6) Meet outside their immediate jurisdiction if the meeting takes place in or nearby a facility owned by the agency, provided that the topic of the meeting is limited to items directly related to the facility.

(7) Visit the office of the local agency's legal counsel for a closed session on pending litigation held pursuant to Section 54956.9, when to do so would reduce legal fees or costs.

(c) Meetings of the governing board of a school district shall be held within the district, except under the circumstances enumerated in subdivision (b), or to do any of the following:

(1) Attend a conference on nonadversarial collective bargaining techniques.

(2) Interview members of the public residing in another district with reference to the trustees' potential employment of an applicant for the position of the superintendent of the district.

(3) Interview a potential employee from another district.

(d) Meetings of a joint powers authority shall occur within the territory of at least one of its member agencies, or as provided in subdivision (b). However, a joint powers authority which has members throughout the state may meet at any facility in the state which complies with the requirements of Section 54961.

(e) If, by reason of fire, flood, earthquake, or other emergency, it shall be unsafe to meet in the place designated, the meetings shall be held for the duration of the emergency at the place designated by the presiding officer of the legislative body or his or her designee in a notice to the local media that have requested notice pursuant to Section 54956, by the most rapid means of communication available at the time.

CHAPTER 258

An act to repeal Chapter 6 (commencing with Section 1320) of Division 6 of the Military and Veterans Code, relating to veterans.

[Approved by Governor August 23, 2004. Filed with
Secretary of State August 23, 2004.]

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

SECTION 1. Chapter 6 (commencing with Section 1320) of Division 6 of the Military and Veterans Code is repealed.

CHAPTER 259

An act to amend Section 120440 of the Health and Safety Code, relating to immunization.

[Approved by Governor August 23, 2004. Filed with
Secretary of State August 23, 2004.]

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

SECTION 1. Section 120440 of the Health and Safety Code is amended to read:

120440. (a) For the purposes of this chapter, the following definitions shall apply:

(1) ''Health care provider'' means any person licensed pursuant to Division 2 (commencing with Section 500) of the Business and Professions Code or a clinic or health facility licensed pursuant to Division 2 (commencing with Section 1200).

(2) ''Schools, child care facilities, and family child care homes'' means those institutions referred to in subdivision (b) of Section 120335, regardless of whether they directly provide immunizations to patients or clients.

(3) ''WIC service provider'' means any public or private nonprofit agency contracting with the department to provide services under the California Special Supplemental Food Program for Women, Infants, and Children, as provided for in Article 2 (commencing with Section 123275) of Chapter 1 of Part 2 of Division 106.

(4) ''Health care plan'' means a health care service plan as defined in subdivision (f) of Section 1345, a government-funded program the purpose of which is paying the costs of health care, or an insurer as described in Sections 10123.5 and 10123.55 of the Insurance Code, regardless of whether the plan directly provides immunizations to patients or clients.

(5) ''County welfare department'' means a county welfare agency administering the California Work Opportunity and Responsibility to

Kids (CalWORKs) program, pursuant to Chapter 2 (commencing with Section 11200.5) of Part 3 of Division 9 of the Welfare and Institutions Code.

(6) ''Foster care agency'' means any of the county and state social services agencies providing foster care services in California.

(b) (1) Local health officers may operate immunization information systems pursuant to their authority under Section 120175, in conjunction with the Immunization Branch of the State Department of Health Services. Local health officers and the State Department of Health Services may operate these systems in either or both of the following manners:

(A) Separately within their individual jurisdictions.

(B) Jointly among more than one jurisdiction.

(2) Nothing in this subdivision shall preclude local health officers from sharing the information set forth in paragraphs (1) to (9), inclusive, of subdivision (c) with other health officers jointly operating the system.

(c) Notwithstanding Sections 49075 and 49076 of the Education Code, Chapter 5 (commencing with Section 10850) of Part 2 of Division 9 of the Welfare and Institutions Code, or any other provision of law, unless a refusal to permit recordsharing is made pursuant to subdivision (e), health care providers, and other agencies, including, but not limited to, schools, child care facilities, service providers for the California Special Supplemental Food Program for Women, Infants, and Children (WIC), health care plans, foster care agencies, and county welfare departments, may disclose the information set forth in paragraphs (1) to (9), inclusive, from the patient's medical record, or the client's record, to local health departments operating countywide or regional immunization information and reminder systems and the State Department of Health Services. Local health departments and the State Department of Health Services may disclose the information set forth in paragraphs (1) to (9), inclusive, to each other, and upon a request for information pertaining to a specific person, to health care providers taking care of the patient. Local health departments and the State Department of Health Services may disclose the information in paragraphs (1) to (6), inclusive, and paragraphs (8) and (9), to schools, child care facilities, county welfare departments, and family child care homes to which the person is being admitted or in attendance, foster care agencies in assessing and providing medical care for children in foster care, and WIC service providers providing services to the person, health care plans arranging for immunization services for the patient, and county welfare departments assessing immunization histories of dependents of CalWORKs participants, upon request for information pertaining to a specific person. Determination of benefits based upon immunization of a dependent CalWORKs participant shall be made

pursuant to Section 11265.8 of the Welfare and Institutions Code. The following information shall be subject to this subdivision:

(1) The name of the patient or client and names of the parents or guardians of the patient or client.

(2) Date of birth of the patient or client.

(3) Types and dates of immunizations received by the patient or client.

(4) Manufacturer and lot number for each immunization received.

(5) Adverse reaction to immunizations received.

(6) Other nonmedical information necessary to establish the patient's or client's unique identity and record.

(7) Current address and telephone number of the patient or client and the parents or guardians of the patient or client.

(8) Patient's or client's gender.

(9) Patient's or client's place of birth.

(d) (1) Health care providers, local health departments, and the State Department of Health Services shall maintain the confidentiality of information listed in subdivision (c) in the same manner as other medical record information with patient identification that they possess. These providers, departments, and contracting agencies are subject to civil action and criminal penalties for the wrongful disclosure of the information listed in subdivision (c), in accordance with existing law. They shall use the information listed in subdivision (c) only for the following purposes:

(A) To provide immunization services to the patient or client, including issuing reminder notifications to patients or clients or their parents or guardians when immunizations are due.

(B) To provide or facilitate provision of third-party payer payments for immunizations.

(C) To compile and disseminate statistical information of immunization status on groups of patients or clients or populations in California, without identifying information for these patients or clients included in these groups or populations.

(D) In the case of health care providers only, as authorized by Part 2.6 (commencing with Section 56) of Division 1 of the Civil Code.

(2) Schools, child care facilities, family child care homes, WIC service providers, foster care agencies, county welfare departments, and health care plans shall maintain the confidentiality of information listed in subdivision (c) in the same manner as other client, patient, and pupil information that they possess. These institutions and providers are subject to civil action and criminal penalties for the wrongful disclosure of the information listed in subdivision (c), in accordance with existing law. They shall use the information listed in subdivision (c) only for

those purposes provided in subparagraphs (A) to (D), inclusive, of paragraph (1) and as follows:

(A) In the case of schools, child care facilities, family child care homes, and county welfare departments, to carry out their responsibilities regarding required immunization for attendance or participation benefits, or both, as described in Chapter 1 (commencing with Section 120325), and in Section 11265.8 of the Welfare and Institutions Code.

(B) In the case of WIC service providers, to perform immunization status assessments of clients and to refer those clients found to be due or overdue for immunizations to health care providers.

(C) In the case of health care plans, to facilitate payments to health care providers, to assess the immunization status of their clients, and to tabulate statistical information on the immunization status of groups of patients, without including patient-identifying information in these tabulations.

(D) In the case of foster care agencies, to perform immunization status assessments of foster children and to assist those foster children found to be due or overdue for immunization in obtaining immunizations from health care providers.

(e) A patient or a patient's parent or guardian may refuse to permit recordsharing. The health care provider administering immunization and any other agency possessing any patient or client information listed in subdivision (c), if planning to provide patient or client information to an immunization system, as described in subdivision (b), shall inform the patient or client, or the parent or guardian of the patient or client, of the following:

(1) The information listed in subdivision (c) may be shared with local health departments, and the State Department of Health Services. The health care provider or other agency shall provide the name and address of the State Department of Health Services and of the immunization registry with which the provider or other agency will share the information.

(2) Any of the information shared with local health departments and the State Department of Health Services shall be treated as confidential medical information and shall be used only to share with each other, and, upon request, with health care providers, schools, child care facilities, family child care homes, WIC service providers, county welfare departments, foster care agencies, and health care plans. These providers, agencies, and institutions shall, in turn, treat the shared information as confidential, and shall use it only as described in subdivision (d).

(3) The patient or client, or parent or guardian of the patient or client, has the right to examine any immunization-related information shared in this manner and to correct any errors in it.

(4) The patient or client, or the parent or guardian of the patient or client, may refuse to allow this information to be shared in the manner described, or to receive immunization reminder notifications at any time, or both.

(f) (1) The health care provider administering the immunization and any other agency possessing any patient or client information listed in subdivision (c), may inform the patient or client, or the parent or guardian of the patient or client, by ordinary mail, of the information in paragraphs (1) to (4), inclusive, of subdivision (e). The mailing must include a reasonable means for refusal, such as a return form or contact telephone number.

(2) The information in paragraphs (1) to (4) of subdivision (e) may also be presented to the parent or guardian of the patient or client during any hospitalization of the patient or client.

(g) If the patient or client, or parent or guardian of the patient or client, refuses to allow the information to be shared, pursuant to paragraph (4) of subdivision (e), the health care provider or other agency may not share this information in the manner described in subdivision (c), except as provided in subparagraph (D) of paragraph (1) of subdivision (d).

(h) Upon request of the patient or client, or the parent or guardian of the patient or client, in writing or by other means acceptable to the recipient, a local health department or the State Department of Health Services that has received information about a person pursuant to subdivision (c) shall do all of the following:

(1) Provide the name and address of other persons or agencies with whom the recipient has shared the information.

(2) Stop sharing the information in its possession after the date of the receipt of the request.

(i) Upon notification, in writing or by other means acceptable to the recipient, of an error in the information, a local health department or the State Department of Health Services that has information about a person pursuant to subdivision (c) shall correct the error. If the recipient is aware of a disagreement about whether an error exists, information to that effect may be included.

(j) (1) Any party authorized to make medical decisions for a patient or client, including, but not limited to, those authorized by Section 6922, 6926, or 6927 of, Part 1.5 (commencing with Section 6550), Chapter 2 (commencing with Section 6910) of Part 4, or Chapter 1 (commencing with Section 7000) of Part 6, of Division 11 of, the Family Code, Section 1530.6 of the Health and Safety Code, or Sections 727 and 1755.3 of, and Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of

Division 2 of, the Welfare and Institutions Code, may permit sharing of the patient's or client's record with any of the immunization information systems authorized by this section.

(2) For a patient or client who is a dependent of a juvenile court, the court or a person or agency designated by the court may permit this recordsharing.

(3) For a patient or client receiving foster care, a person or persons licensed to provide residential foster care, or having legal custody, may permit this recordsharing.

(k) For purposes of supporting immunization information systems, the State Department of Health Services shall assist its Immunization Branch in both of the following:

(1) The provision of department records containing information about publicly funded immunizations.

(2) Supporting efforts for the reporting of publicly funded immunizations into immunization information systems by health care providers and health care plans.

(*l*) Section 120330 shall not apply to this section.

CHAPTER 260

An act relating to school employees.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. For purposes of making reductions initiated during the 2004–05 school year pursuant to Section 44955 of the Education Code in the number of employees because of a reduction in services or elimination of a juvenile camp program, a county superintendent of schools in a county of the first class may retain those employees until the effective date of the closure or reduction in services of that juvenile camp program.

CHAPTER 261

An act to add Section 17136.5 to the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor August 23, 2004. Filed with
Secretary of State August 23, 2004.]

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

SECTION 1. Section 17136.5 is added to the Revenue and Taxation Code, to read:

17136.5. The provisions of Section 134(b)(3) of the Internal Revenue Code, relating to military benefits, as amended by Section 102 of the Military Family Tax Relief Act of 2003 (Public Law 108-121), shall apply with respect to deaths occurring on or after September 11, 2001.

SEC. 2. The Legislature finds and declares that the application of this act to deaths that occurred on or after September 11, 2001, serves a public purpose and is necessary to provide equitable treatment to California survivors of military personnel who lost their lives in defense of their country.

SEC. 3. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 262

An act to amend Section 120130 of the Health and Safety Code, relating to disease prevention, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 2004. Filed with
Secretary of State August 23, 2004.]

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

SECTION 1. Section 120130 of the Health and Safety Code is amended to read:

120130. (a) The department shall establish a list of reportable diseases and conditions and shall include the urgency of reporting each disease and condition. The list of reportable diseases and conditions may include both communicable and noncommunicable diseases. The list may include those diseases that are either known to be, or suspected of being, transmitted by milk or milk-based products. The list shall also include, but not be limited to, diphtheria, listeria, salmonella, shigella, streptococcal infection in food handlers or dairy workers, and typhoid. The list may be modified at any time by the department, after consultation with the California Conference of Local Health Officers.

Modification of the list shall be exempt from the administrative regulation and rulemaking requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, and shall be implemented without being adopted as a regulation, except that the revised list shall be filed with the Secretary of State and printed in the California Code of Regulations as required under subdivision (d). Those diseases listed as reportable shall be properly reported as required to the department by the health officer.

(b) The department may from time to time adopt and enforce regulations requiring strict or modified isolation, or quarantine, for any of the contagious, infectious, or communicable diseases, if in the opinion of the department the action is necessary for the protection of the public health.

(c) The health officer may require strict or modified isolation, or quarantine, for any case of contagious, infectious, or communicable disease, when this action is necessary for the protection of the public health.

(d) The list established pursuant to subdivision (a) and any subsequent modifications shall be published in Title 17 of the California Code of Regulations.

(e) Notwithstanding any other provision of law, no civil or criminal penalty, fine, sanction, finding, or denial, suspension, or revocation of licensure for any person or facility may be imposed based upon a failure to provide the notification of a reportable disease or condition that is required under this section, unless the disease or condition that is required to be reported was printed in the California Code of Regulations at least six months prior to the date of the claimed failure to report.

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 facilitate accurate and efficient reporting of reportable diseases and conditions to the proper authorities at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 263

An act to amend Sections 14002.3, 41320, 41320.2, 41327, and 41328 of, to add Article 2.7 (commencing with Section 41329.50) to Chapter 3 of Part 24 of, and to repeal Sections 41323 and 41324 of, the Education Code, and to add Article 9 (commencing with Section 63049.67) to Chapter 2 of Division 1 of Title 6.7 of the Government Code, relating

to school finance, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 14002.3 of the Education Code is amended to read:

14002.3. Notwithstanding any other law, for purposes of Sections 14002, 14004, and 41301, for the 2000–01 fiscal year and each fiscal year thereafter, the Superintendent of Public Instruction shall certify to the Controller amounts that do not exceed the amounts needed to fund the revenue limits of school districts, as determined pursuant to Section 42238, the revenue limits of county superintendents of schools, as determined pursuant to Section 2558, warrants issued pursuant to Section 41329.57, and the revenue limit portion of charter school operational funding, as determined pursuant to Section 47633.

SEC. 2. Section 41320 of the Education Code is amended to read:

41320. As a condition to any emergency apportionment to be made pursuant to Section 41320.2 the following requirements shall be met:

(a) The district requesting the apportionment shall submit to the county superintendent of schools having jurisdiction over the district a report issued by an independent auditor approved by the county superintendent of schools on the financial conditions and budgetary controls of the district, a written management review conducted by a qualified management consultant approved by the county superintendent of schools, and a fiscal plan adopted by the governing board to resolve the financial problems of the district.

(b) The county superintendent of schools shall review, and provide written comment on, the independent auditor's report, the management review, and the district plan. That written comment shall include the county superintendent's approval or disapproval of the district plan. In the event the county superintendent disapproves the plan, the governing board shall revise the district plan to respond to the concerns expressed by the county superintendent.

(c) Upon his or her approval of the district plan, the county superintendent of schools shall submit copies of the report, review, plan, and written comments specified in subdivision (b) to the Superintendent of Public Instruction, the Joint Legislative Audit Committee, the Joint Legislative Budget Committee, the Director of Finance, and the Controller.

(d) The Superintendent of Public Instruction shall review the reports and comments submitted to him or her by the county superintendent of

schools and shall certify to the Director of Finance that the action taken to correct the financial problems of the district is realistic and will result in placing the district on a sound financial basis.

(e) The district shall develop a schedule to repay the emergency loan, including any lease financing pursuant to Article 2.7 (commencing with Section 41329.50), and submit it to the county superintendent of schools. The county superintendent of schools shall review and comment on the repayment schedule and submit it to the Superintendent of Public Instruction for approval or disapproval. Upon the approval of the repayment schedule, and of the other reports, reviews, plans, and the appointment of the trustee required by this article, the Superintendent of Public Instruction shall request the Controller to disburse the proceeds of the emergency loan to the district.

(f) The district requesting the apportionment shall reimburse the county superintendent of schools for the costs incurred by the superintendent pursuant to this section.

SEC. 3. Section 41320.2 of the Education Code is amended to read:

41320.2. (a) The governing board of a school district that determines during a fiscal year that its revenues are less than the amount necessary to meet its current year expenditure obligations may request an emergency apportionment through the Superintendent of Public Instruction subject to the requirements and repayment provisions of this article and Article 2.7 (commencing with Section 41329.50).

(b) It is not the intent of the Legislature that this section authorize emergency loans to school districts for the purpose of meeting cashflow requirements pending the receipt of local taxes and other funds.

(c) It is the intent of the Legislature that emergency apportionments, as described in this section, not occur, unless funds have been specifically appropriated therefor by the Legislature.

SEC. 4. Section 41323 of the Education Code is repealed.

SEC. 5. Section 41324 of the Education Code is repealed.

SEC. 6. Section 41327 of the Education Code is amended to read:

41327. (a) In accordance with timelines, instructions, and a format established by the Superintendent of Public Instruction, the state-appointed administrator shall prepare or obtain the following reports and plans:

(1) A management review and recovery plan.

(2) A multiyear financial recovery plan. The multiyear financial recovery plan shall include a plan, to be submitted annually on or before July 1, to repay to the state any and all loans owed by the district.

(3) During the period of service by the state-appointed administrator, an annual report on the financial condition of the district, including, but not necessarily limited to, all of the following information:

(A) Specific actions taken to reduce district expenditures or increase income to the district, and the amount of the resulting cost savings and increases in income.

(B) A copy of the adopted district budget for the current fiscal year.

(C) The amount of the district budgetary reserve.

(D) The status of employee contracts.

(E) Any obstacles to the implementation of the recovery plans described in paragraphs (1) and (2).

(b) Each of the reports or plans required under this section, or under any other law that requires the district to prepare reports or plans, shall be submitted to the Superintendent of Public Instruction for approval, after his or her consideration of comments and recommendations of the county superintendent of schools. The Superintendent of Public Instruction may accept and approve, for the purposes of this section, any reports or plans that were prepared by or for the district prior to the district's acceptance of a loan as described in subdivision (a) of Section 41326.

(c) With the approval of the Superintendent of Public Instruction, the state-appointed administrator may enter into agreements on behalf of the district and, subject to any contractual obligation of the district, change any existing district rules, regulations, policies, or practices as necessary for the effective implementation of the recovery plans referred to in subdivision (a).

SEC. 7. Section 41328 of the Education Code is amended to read:

41328. The qualifying district shall bear 100 percent of all costs associated with implementing this article, including the activities of the County Office Fiscal Crisis and Management Team or the regional team. The Superintendent of Public Instruction shall withhold from the apportionments to be made from the State School Fund to the district the amounts due pursuant to this section.

SEC. 8. Article 2.7 (commencing with Section 41329.50) is added to Chapter 3 of Part 24 of the Education Code, to read:

Article 2.7. Emergency Apportionment Financing

41329.50. The following definitions apply to this article, Article 2 (commencing with Section 41320), and Article 2.5 (commencing with Section 41325), unless the context clearly indicates or requires another or different meaning:

(a) ''Bank'' means the California Infrastructure and Economic Development Bank.

(b) ''Bonds'' has the same meaning specified in Section 63010 of the Government Code.

(c) ''Loan'' and ''emergency apportionments'' means the financing described in Sections 41329.51, 41329.52, and 41329.53. The financing does not constitute a borrowing but an advance payment of apportionments subject to repayment with interest as described in the article.

(d) ''School district'' means a school district that requests an emergency apportionment pursuant to Section 41320, including, as applicable, an administrator appointed pursuant to Article 2 (commencing with Section 41320) and a trustee appointed pursuant to Article 2.5 (commencing with Section 41325).

41329.51. Notwithstanding any other law, an emergency apportionment is a financing provided to a school district complying with the requirements contained in Article 2 (commencing with Section 41320) and Article 2.5 (commencing with Section 41325). The emergency apportionment shall be made pursuant to either Section 41329.52 or Section 41329.53, as determined by statute. The school district, the bank, and the Superintendent of Public Instruction shall promptly perform the duties specified in the statute making the emergency apportionment.

41329.52. (a) A school district may receive a two part financing designed to provide an advance of apportionments owed to the district from the State School Fund.

(b) The initial emergency apportionment shall be an interim loan from the General Fund to the school district. General Fund money shall not be advanced to a school district until that district agrees to obtain a lease financing as described in subdivision (c) and the bank adopts a reimbursement resolution governing the lease financing. The interim loan shall be repaid in full, with interest, from the proceeds of the lease financing pursuant to subdivision (c) within one year of the date the district receives the initial emergency apportionment disbursement. The interest rate on the interim loan shall be the rate earned by moneys in the Pooled Money Investment Account as of the date of the initial disbursement of emergency apportionments to the school district.

(c) The school district shall enter into a lease financing with the bank for the purpose of financing the emergency apportionment, including a repayment to the General Fund of the amount advanced pursuant to subdivision (b). In addition to the emergency apportionment, the lease financing may include funds necessary for reserves, capitalized interest, credit enhancements and costs of issuance. The bank shall issue bonds for that purpose pursuant to the powers granted pursuant to the Bergeson-Peace Infrastructure and Economic Development Bank Act as set forth in Division 1 (commencing with Section 63000) of Part 6.7 of the Government Code. The term of the lease shall not exceed 20 years.

41329.53. (a) As an alternative to the lease financing pursuant to Section 41329.52, a school district may receive an emergency apportionment from the General Fund designed to provide an advance of apportionments owed to the district from the State School Fund. The emergency apportionment shall be repaid within 20 years. The calculation of the amount of the apportionment, including implied costs, and the interest rate shall be calculated pursuant to subdivision (b). Each year the Superintendent of Public Instruction shall withhold from the apportionments to be made to the district from the State School Fund an amount equal to the emergency apportionment repayment that becomes due in the year.

(b) The determination by statute as to whether the emergency apportionment shall take the form of lease financing pursuant to Section 41329.52 or an emergency apportionment from the General Fund pursuant to this section shall be based upon the availability of funds within the General Fund and not on any cost differential between the two financing mechanisms. To ensure that the two alternatives are cost neutral, if the statute does not authorize a lease financing, the bank shall commission a cost study from financial advisers under contract with the bank to determine the interest rate, costs of issuance, and if it is more cost effective, credit enhancement costs likely if the financing was a lease financing rather than an emergency apportionment from the General Fund. These implied lease costs shall be included as the fixed interest rate on the repayment of the emergency apportionment to the General Fund, repayable over 20 years.

41329.54. In furtherance of the lease financing authorized pursuant to Section 41329.52, and notwithstanding any other law, the school district may lease any property of the school district to the bank or from the bank, in connection with the bonds issued by the bank. In each case, the lease shall include any rental provision or term and any transfer, assignment, payment, security, default, remedy, and other terms or provisions agreed to by the bank and the school district. In addition, the school district may enter into any agreement for liquidity or credit enhancement, with any reimbursement, payment, interest, security, default, remedy and other terms it deems necessary or appropriate in connection with entering into the lease financing. The school district may enter into any other agreements or execute any other documents necessary or desirable to carry out the purposes of this section. This section shall be deemed to provide a complete, additional, and alternative method for accomplishing the acts authorized by this article. Any agreement entered into in connection with the lease of any property of the district pursuant to a financing pursuant to Section 41329.52, including without limitation, any agreement for liquidity or credit enhancement, need not comply with the requirements of any other law

applicable to the purchase, sale, or lease of school district property or the granting of any pledge or encumbrance.

41329.55. (a) Simultaneous with the execution of the lease financing authorized pursuant to Section 41329.52, the school district shall provide to the Controller a notification of its lease financing. The notice shall include a schedule of rent payments to become due to the bank from the school district and identifying the bond trustee. The Controller shall make the apportionment to the bond trustee of those amounts on the dates shown on the schedule. The bank may further authorize that the apportionments be used to pay or reimburse the provider of any credit enhancement of bonds issued by the bank in connection with this article. The Controller shall make the apportionment only from moneys in the State School Fund designated for apportionment to the district pursuant to Section 42238.

(b) The amount apportioned for a school district pursuant to this section is an allocation to the district for purposes of subdivision (b) of Section 8 of Article XVI of the California Constitution. For purposes of computing revenue limits pursuant to Section 42238 for any school district, the revenue limit for any fiscal year in which funds are apportioned for the district pursuant to this section shall include any amounts apportioned by the Controller pursuant to subdivision (a) as well as Section 41329.54.

(c) No party, including the school district or any of its creditors, shall have any claim to the money apportioned or to be apportioned to the bond trustee by the Controller pursuant to this section.

41329.56. (a) Chapter 57 of the Statutes of 1993 consolidated several previous emergency apportionments and a loan to the West Contra Costa Unified School District and specified the repayment terms of that apportionment. Chapter 14 of the Statutes of 2003 authorized an emergency apportionment to the Oakland Unified School District and specified the repayment terms of that apportionment. Collectively these are referred to in this section as ''existing apportionments.''

(b) Promptly following the effective date of this article, the bank shall issue separate bonds for the West Contra Costa Unified School District and the Oakland Unified School District for lease financing pursuant to Section 41329.52. The school districts shall use the proceeds to repay the existing apportionments. The terms of the leases shall not exceed 20 years.

41329.57. (a) (1) The Controller shall annually transfer from Section A of the State School Fund the amount of funds necessary to pay the warrants issued pursuant to paragraph (2) so that the effective cost of the lease financing provided to the Oakland Unified School District, the Vallejo City Unified School District, and the West Contra Costa Unified School District pursuant to this article shall be equal to the cost

of the emergency loan made to each district at the annual rate paid on moneys in the Pooled Money Investment Account for the year immediately preceding the date each loan was funded.

(2) The executive director of the bank shall annually notify the Controller of the actual amount of the difference between the cost of the lease financing compared to the cost of the original emergency loan for each district for each year and the Controller shall annually issue a warrant to each school district in that amount. Payments to a district shall occur only during the term of the loan for that district and shall be made no sooner than the corresponding payments are made to bondholders under the lease financing for that district.

(3) For purposes of making the computations required by Section 8 of Article XVI of the California Constitution, the warrants issued pursuant to paragraph (2) are ''General Fund revenues appropriated to school districts,'' as defined in subdivision (c) of Section 41202 for the fiscal years in which the warrants are issued and included within the ''total allocations to school districts and community college districts from General Fund proceeds of taxes appropriated pursuant to Article XIII B'' as defined in subdivision (e) of Section 41202, for the fiscal years in which the warrants are issued.

(b) It is the intent of the Legislature that the financing cost subsidies funded in this section not be deemed precedent nor in conflict with Section 41329.53, as these districts requested loans prior to the enactment of this article.

SEC. 9. Article 9 (commencing with Section 63049.67) is added to Chapter 2 of Division 1 of Title 6.7 of the Government Code, to read:

Article 9. Financing of School District Emergency Apportionments

63049.67. (a) Notwithstanding any other provision of this division, a financing of emergency apportionments upon the request of a school district pursuant to Article 2.7 (commencing with Section 41329.50) of Chapter 3 of Part 24 of the Education Code, is deemed to be in the public interest and eligible for financing by the bank. Article 3 (commencing with Section 63041), Article 4 (commencing with Section 63042) and Article 5 (commencing with Section 63043) do not apply to the financing provided by the bank in connection with an emergency apportionment.

(b) The bank may issue bonds pursuant to Chapter 5 (commencing with Section 63070) and provide the proceeds to a school district pursuant to a lease agreement. The proceeds may be used as an emergency apportionment, to reimburse the interim emergency apportionment from the General Fund authorized pursuant to subdivision (b) of Section 41329.52 of the Education Code, or to refund

bonds previously issued under this section. Bond proceeds may also be used to fund necessary reserves, capitalized interest, credit enhancement costs, and costs of issuance.

(c) Bonds issued under this article are not deemed to constitute a debt or liability of the state or of any political subdivision of the state, other than a limited obligation of the bank, or a pledge of the faith and credit of the state or of any political subdivision. All bonds issued under this article shall contain on the face of the bonds a statement to the same effect.

(d) Any fund or account established in connection with the bonds shall be established outside of the centralized treasury system. Notwithstanding any other law, the bank shall select the financing team and the trustee for the bonds, and the trustee shall be a corporation or banking association authorized to exercise corporate trust powers.

(e) Pursuant to Section 41329.55 of the Education Code, the school district shall instruct the Controller to repay the lease from moneys in the State School Fund designated for apportionment to the school district.

(f) Notwithstanding any other law, as long as any bonds issued pursuant to this section are outstanding, the school district for which the bonds were issued is not eligible to be a debtor in a case under Chapter 9 of the United States Bankruptcy Code, as it may be amended from time to time, and no governmental officer or organization is or may be empowered to authorize the school district to be a debtor under that chapter.

(g) The bank may enter into contracts or agreements with 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 this section. The bank may pledge apportionments made by the Controller directly to the bond trustee pursuant to Section 41329.55 of the Education Code as security for repayment of any obligation owed to a bank, insurer, or other financial institution pursuant to this subdivision.

SEC. 10. The sum of one hundred thousand dollars ($100,000) is hereby appropriated from the California Infrastructure and Economic Development Bank Fund to the California Infrastructure and Economic Development Bank to establish one personnel year in order to fulfill the requirements of Article 9 (commencing with Section 63049.76) of Chapter 2 of Division 1 of Title 6.7 of the Government Code.

SEC. 11. The emergency loan provided to the Vallejo City Unified School District through a statute enacted in the 2003–04 Regular Session is deemed an interim loan as described in Section 41329.52 of the Education Code. The interim loan shall be repaid with proceeds of a lease financing pursuant to Section 41329.52 of the Education Code.

SEC. 12. Nothing in this act supersedes, impairs, or revises the authorization provided by Section 11 of Chapter 14 of the Statutes of 2003 or Section 11 of Chapter 53 of the Statutes of 2004 to sell property owned by a district and use the proceeds from the sale to reduce or retire an emergency loan or apportionment.

SEC. 13. The Legislature finds and declares that due to unique circumstances relating to the fiscal emergencies in the Oakland Unified School District, the Vallejo City Unified School District, and 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.

SEC. 14. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to address the fiscal emergencies facing school districts that have received or that are requesting an emergency apportionment from the state, and to ensure that those districts meet their cash obligations for this fiscal year, it is necessary that this act take effect immediately.

CHAPTER 264

An act to add Sections 89500.7 and 92611.7 to the Education Code, relating to public postsecondary education.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 89500.7 is added to the Education Code, to read:

89500.7. (a) The trustees shall offer, on at least a semiannual basis, to each of the university's filers, an orientation course on the relevant ethics statutes and regulations that govern the official conduct of university officials.

(b) As used in this section, ''filer'' means each member, officer, or designated employee of the California State University, including a trustee, who, because of his or her affiliation with the university or any subdivision or campus thereof, is required to file a Statement of Economic Interests in accordance with Chapter 7 (commencing with Section 87100) of Title 9 of the Government Code.

(c) The trustees shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to this section. These records shall be maintained for a period of at least five years after each course is offered. These records shall be public records subject to inspection and copying in accordance with subdivision (a) of Section 81008 of the Government Code and any other public records disclosure laws that are applicable to the university.

(d) Except as provided in subdivision (e), each filer shall attend the orientation course established pursuant to subdivision (a) in accordance with both of the following:

(1) For a person who, as of January 1, 2005, is a filer, as defined in subdivision (b), not later than December 31, 2005, and thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2007.

(2) For a person who becomes a filer, as defined in subdivision (b), after January 1, 2005, within six months after he or she becomes a filer, and at least once during each consecutive period of two calendar years commencing on January 1 of the first odd-numbered year thereafter.

(e) The requirements of subdivision (d) shall not apply to a filer, as defined in subdivision (b), who has taken an ethics orientation course through another state agency or the Legislature within the periods set forth in paragraphs (1) and (2) of subdivision (d) if, in the determination of the trustees, that course covered substantially the same material as the course the university would offer to the filer pursuant to this section.

SEC. 2. Section 92611.7 is added to the Education Code, to read:

92611.7. (a) The regents are urged to offer, on at least a semiannual basis, to each of the university's filers, an orientation course on the relevant ethics statutes and regulations that govern the official conduct of university officials.

(b) As used in this section, ''filer'' means each member, officer, or designated employee of the University of California, including a regent, who, because of his or her affiliation with the university or any subdivision or campus thereof, is required to file a Statement of Economic Interests in accordance with Chapter 7 (commencing with Section 87100) of Title 9 of the Government Code

(c) The regents shall maintain records indicating the specific attendees, each attendee's job title, and dates of their attendance for each orientation course offered pursuant to this section. These records shall be maintained for a period of at least five years after each course is offered. These records shall be public records subject to inspection and copying in accordance with subdivision (a) of Section 81008 of the Government Code and any other public records disclosure laws that are applicable to the university.

(d) Except as provided in subdivision (e), each filer shall attend the orientation course established pursuant to subdivision (a) in accordance with both of the following:

(1) For a person who, as of January 1, 2005, is a filer, as defined in subdivision (b), not later than December 31, 2005, and thereafter, at least once during each consecutive period of two calendar years commencing on January 1, 2007.

(2) For a person who becomes a filer, as defined in subdivision (b), after January 1, 2005, within six months after he or she becomes a filer, and at least once during each consecutive period of two calendar years commencing on January 1 of the first odd-numbered year thereafter.

(e) The requirements of subdivision (d) shall not apply to a filer, as defined in subdivision (b), who has taken an ethics orientation course through another state agency or the Legislature within the periods set forth in paragraphs (1) and (2) of subdivision (d) if, in the determination of the regents, that course covered substantially the same material as the course the university would offer to the filer pursuant to this section.

CHAPTER 265

An act to amend Section 66907.7 of the Government Code, relating to natural resources.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 66907.7 of the Government Code is amended to read:

66907.7. (a) The conservancy may award grants to local public agencies, state agencies, federal agencies, federally recognized Indian tribes, the Tahoe transportation district established under Section 66801, and nonprofit organizations, for the purposes of this title.

(b) Grants to nonprofit organizations for the acquisition of real property or interests therein shall be subject to all of the following conditions:

(1) The purchase price of any interest in land acquired by the nonprofit organization may not exceed fair market value as established by an appraisal approved by the conservancy.

(2) The conservancy approves the terms under which the interest in land is acquired.

(3) The interest in land acquired pursuant to a grant from the conservancy may not be used as security for any debt to be incurred by the nonprofit organization unless the conservancy approves the transaction.

(4) The transfer of land acquired pursuant to a grant shall be subject to the approval of the conservancy and the execution of an agreement between the conservancy and the transferee sufficient to protect the interest of the people of California.

(5) The state shall have a right of entry and power of termination in and over all interests in real property acquired with state funds, which may be exercised if any essential term or condition of the grant is violated.

(6) If the existence of the nonprofit organization is terminated for any reason, title to all interest in real property acquired with state funds shall immediately vest in the state, except that, prior to that termination, another public agency or nonprofit organization may receive title to all or a portion of that interest in real property, by recording its acceptance of title, together with the conservancy's approval, in writing.

(c) Any deed or other instrument of conveyance whereby real property is being acquired by a nonprofit organization pursuant to this section shall be recorded and shall set forth the executory interest or right of entry on the part of the state.

(d) The relocation by a local public agency of a water or sewer-related infrastructure owned by a publicly owned utility shall be considered an eligible expense by the conservancy for the purpose of awarding soil erosion grant funds, if that relocation is intended to control or reduce soil erosion caused by the infrastructure to be relocated. A local public agency is eligible to receive grant funds up to two-thirds of the cost of relocating the water or sewer-related infrastructure, provided the relocation cost is not eligible for any other public funding.

CHAPTER 266

An act to add Section 7514.3 to the Government Code, relating to state pension systems, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 7514.3 is added to the Government Code, to read:

7514.3. Notwithstanding any other provision of law, state pension systems may, subject to and consistent with their fiduciary duties and the standard for prudent investment set forth in Section 20190 of this code and Section 17 of Article XVI of the California Constitution, establish credit enhancement programs to assist entities of state and local government and other issuers of municipal and public finance debt to secure more favorable financing terms through a variety of types of credit enhancement including, but not limited to, enhancement of the credit of bonds, notes, and other indebtedness. Any credit enhancement program shall comply with the requirements of Section 503 of the Internal Revenue Code.

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

In order that state retirement systems may establish credit enhancement programs during this period of fiscal crisis, it is necessary that this act take effect immediately.

CHAPTER 267

An act to repeal and add Section 19170 of the Revenue and Taxation Code, relating to taxation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 19170 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 1 of this act is operative January 1, 2004.

SEC. 3. Section 19170 is added to the Revenue and Taxation Code, to read:

19170. (a) An income tax preparer that is subject to Section 18621.9 is liable for a penalty in the amount of fifty dollars ($50) for each acceptable individual income tax return prepared by that income tax preparer that is not electronically filed, unless it is shown that the failure

to electronically file that acceptable individual income tax return is due to reasonable cause and not due to willful neglect.

(b) For purposes of this section, reasonable cause includes, but is not limited to, a taxpayer's election not to electronically file an acceptable individual income tax return in compliance with Section 18621.9.

(c) This section shall apply to acceptable individual income tax returns required to be filed on or after January 1, 2005.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to provide income tax preparers, that are subject to a penalty for each acceptable individual income tax return not filed electronically, with adequate time to comply with the new requirements for electronic filing of income tax returns, it is necessary that this act take effect immediately.

CHAPTER 268

An act to add Section 20589 to the Government Code, relating to public employees' retirement.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 20589 is added to the Government Code, to read:

20589. (a) Notwithstanding any other provision of this article, the board may enter into an agreement with the board of retirement of the San Francisco City and County Employees' 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 the city and 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 city and county, fire authority, or district and inclusion of the former public agency employees in that 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 and 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 city and 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 San Francisco City and County Employees' Retirement System as of the date of transfer specified in the agreement. Liability of the city and county retirement system shall be for payment of benefits to transferred employees.

(d) Any member transferred who becomes a member of the city and county retirement system upon that transfer date shall be subject to provisions of this part and the provisions of the San Francisco City Charter and Administrative Code 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 city and county retirement system during his or her membership in this system.

(e) This section shall apply only in the City and County of San Francisco.

CHAPTER 269

An act to add Section 7.3 to the Ventura County Watershed Protection Act (Chapter 44 of the Statutes of 1944, Fourth Extraordinary Session), relating to the Ventura County Watershed Protection District.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 7.3 is added to the Ventura County Watershed Protection Act (Chapter 44 of the Statutes of 1944, Fourth Extraordinary Session), to read:

Sec. 7.3. In addition to other provisions specified in this act, the district may exercise the authority granted to a county pursuant to

Section 25845 of the Government Code for the purposes of abating a nuisance. For the purposes of carrying out this section, a reference to the ''county'' in Section 25845 of the Government Code means the district. An abatement lien that is created pursuant to this section is subject to subdivisions (e), (f), and (g) of Section 25845 of the Government Code and shall have no greater priority than a lien created pursuant to that section.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 270

An act to amend Sections 1337.1 and 1430 of the Health and Safety Code, relating to health facilities.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 1337.1 of the Health and Safety Code is amended to read:

1337.1. A skilled nursing or intermediate care facility shall adopt an approved training program that meets standards established by the state department. The approved training program shall consist of at least the following:

(a) An orientation program to be given to newly employed nurse assistants prior to providing direct patient care in skilled nursing or intermediate care facilities.

(b) (1) A precertification training program consisting of at least 60 classroom hours of training on basic nursing skills, patient safety and rights, the social and psychological problems of patients, and resident abuse prevention, recognition, and reporting pursuant to subdivision (e). The 60 classroom hours of training may be conducted within a skilled nursing or intermediate care facility or in an educational institution.

(2) In addition to the 60 classroom hours of training required under paragraph (1), the precertification training program shall consist of at least 100 hours of supervised and on-the-job training clinical practice. The 100 hours may consist of normal employment as a nurse assistant

under the supervision of either the director of nurse training or a licensed nurse qualified to provide nurse assistant training who has no other assigned duties while providing the training.

(3) At least two hours of the 60 hours of classroom training and at least four hours of the 100 hours of the supervised clinical training shall address the special needs of persons with developmental and mental disorders, including mental retardation, Alzheimer's disease, cerebral palsy, epilepsy, dementia, Parkinson's disease, and mental illness.

(4) In a precertification training program subject to this subdivision, credit shall be given for the training received in an approved precertification training program adopted by another skilled nursing or intermediate care facility.

(5) This subdivision shall not apply to a skilled nursing or intermediate care facility that demonstrates to the state department that it employs only nurse assistants with a valid certification.

(c) Continuing in-service training to assure continuing competency in existing and new nursing skills.

(d) Each facility shall consider including training regarding the characteristics and method of assessment and treatment of acquired immune deficiency syndrome (AIDS).

(e) (1) The approved training program shall include, within the 60 hours of classroom training, a minimum of six hours of instruction on preventing, recognizing, and reporting instances of resident abuse utilizing those courses developed pursuant to Section 13823.93 of the Penal Code, and a minimum of one hour of instruction on preventing, recognizing, and reporting residents' rights violations.

(2) A minimum of four hours of instruction on preventing, recognizing, and reporting instances of resident abuse, including instruction on preventing, recognizing, and reporting residents' rights violations, shall be included within the total minimum hours of continuing education or in-service training required and in effect for certified nursing assistants.

SEC. 2. Section 1430 of the Health and Safety Code is amended to read:

1430. (a) Except where the state department has taken action and the violations have been corrected to its satisfaction, a licensee who commits a class ''A'' or ''B'' violation may be enjoined from permitting the violation to continue or may be sued for civil damages within a court of competent jurisdiction. An action for injunction or civil damages, or both, may be prosecuted by the Attorney General in the name of the people of the State of California upon his or her own complaint or upon the complaint of a board, officer, person, corporation, or association, or by a person acting for the interests of itself, its members, or the general public. The amount of civil damages that may be recovered in an action

brought pursuant to this section may not exceed the maximum amount of civil penalties that could be assessed on account of the violation or violations.

(b) A current or former resident or patient of a skilled nursing facility, as defined in subdivision (c) of Section 1250, or intermediate care facility, as defined in subdivision (d) of Section 1250, may bring a civil action against the licensee of a facility who violates any rights of the resident or patient as set forth in the Patients Bill of Rights in Section 72527 of Title 22 of the California Code of Regulations, or any other right provided for by federal or state law or regulation. The suit shall be brought in a court of competent jurisdiction. The licensee shall be liable for the acts of the licensee's employees. The licensee shall be liable for up to five hundred dollars ($500), and for costs and attorney fees, and may be enjoined from permitting the violation to continue. An agreement by a resident or patient of a skilled nursing facility or intermediate care facility to waive his or her rights to sue pursuant to this subdivision shall be void as contrary to public policy.

(c) The remedies specified in this section shall be in addition to any other remedy provided by law.

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 271

An act to add Section 2785.5 to the Business and Professions Code, relating to healing arts.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 2785.5 is added to the Business and Professions Code, to read:

2785.5. The board shall establish a workgroup, or use an existing committee, to encourage and facilitate efficient transfer agreements or other enrollment models between associate degree nursing programs and

baccalaureate degree nursing programs so students are able to complete the baccalaureate program without unnecessary repetition of coursework.

CHAPTER 272

An act to add Section 32289 to, and to repeal Section 35294.95 of, the Education Code, relating to school safety.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 32289 is added to the Education Code, to read:

32289. A complaint of noncompliance with the school safety planning requirements of Title IV of the federal No Child Left Behind Act of 2001, 20 U.S.C. Sec. 7114(d)(7), may be filed with the department under the Uniform Complaint Procedures as set forth in Chapter 5.1 (commencing with Section 4600) of Title 5 of the California Code of Regulations.

SEC. 2. Section 35294.95 of the Education Code is repealed.

CHAPTER 273

An act to add Section 1463 to the Government Code, relating to public officials.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 1463 is added to the Government Code, to read:

1463. For the purposes of this chapter, a government crime insurance policy or employee dishonesty insurance policy, including faithful performance, may be provided as an alternative to the official bond by any county or city, subject to approval by the presiding judge of the superior court and recording and filing as provided in Sections 1457 to 1460.1, inclusive. An insurance policy procured pursuant to this section may be used as a master bond as though it were an official bond,

subject to approval of the appointing power or the legislative body as provided in Section 1481.

CHAPTER 274

An act to amend Section 94 of the Streets and Highways Code, relating to transportation.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 94 of the Streets and Highways Code is amended to read:

94. (a) The department may make and enter into any contracts in the manner provided by law that are required for performance of its duties, provided that contracts with federally recognized Indian tribes shall be limited to activities related to on-reservation or off-reservation cultural resource management and environmental studies and off-reservation traffic impact mitigation projects on or connecting to the state highway system.

(b) To implement off-reservation traffic impact mitigation contracts with federally recognized Indian tribes, all of the following shall apply:

(1) Any contract shall provide for the full reimbursement of expenses and costs incurred by the department in the exercise of its contractual responsibilities. Funds for the project shall be placed in an escrow account prior to project development. The contract shall also provide for a limited waiver of sovereign immunity by that Indian tribe for the state for the purpose of enforcing obligations arising from the contracted activity.

(2) The proposed transportation project shall comply with all applicable state and federal environmental impact and review requirements, including, but not limited to, the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

(3) The department's work on the transportation project under the contract shall not jeopardize or adversely affect the completion of other transportation projects included in the adopted State Transportation Improvement Program.

(4) The transportation project is included in or consistent with the affected regional transportation plan.

CHAPTER 275

An act to amend Section 25503.6 of the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a distilled spirits rectifier, or a distilled spirits manufacturer, or distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County or Alameda County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located in San Bernardino County.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(F) An outdoor stadium and a fully enclosed arena with fixed seating capacities in excess of 10,000 seats located in Fresno County.

(G) An athletic and entertainment complex of not less than 50 acres that includes within its boundaries an outdoor stadium with a fixed seating capacity of at least 8,000 seats and a second outdoor stadium with

a fixed seating capacity of at least 3,500 seats located within Riverside County.

(H) An outdoor stadium with a fixed seating capacity in excess of 1,500 seats located in Tulare County.

(I) A motorsports entertainment complex of not less than 50 acres that includes within its boundaries an outdoor speedway with a fixed seating capacity of at least 50,000 seats, located within San Bernardino County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the stadium or arena owned by the on-sale licensee.

(4) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits rectifier, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent that purchased the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the distilled spirits rectifier, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

(c) Any beer manufacturer or holder of a winegrower's license, any distilled spirits rectifier, any distilled spirits manufacturer, or any distilled spirits manufacturer's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill all or part of those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space, time, or costs involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, a holder of a winegrower's license, a distilled spirits rectifier, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and

shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, ''beer manufacturer'' includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 2. The Legislature hereby finds and declares that a special statute is necessary and that a general statute cannot be made applicable, within the meaning of Section 16 of Article IV of the California Constitution, because of unique circumstances and concerns applicable to certain facilities in Alameda County.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that advertising space and time may be purchased with respect to events scheduled in 2004 from, or on behalf of, retail licensees who are authorized to sell alcoholic beverages, it is necessary for this act to take effect immediately.

CHAPTER 276

An act to amend and renumber Sections 19805 and 19835.6 of the Business and Professions Code, relating to gaming.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 19805 of the Business and Professions Code is amended to read:

19805. As used in this chapter, the following definitions shall apply:

(a) ''Affiliate'' means a person who, directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, a specified person.

(b) ''Applicant'' means any person who has applied for, or is about to apply for, a state gambling license, a key employee license, a registration, a finding of suitability, a work permit, a manufacturer's or distributor's license, or an approval of any act or transaction for which the approval or authorization of the commission or division is required or permitted under this chapter.

(c) ''Banking game'' or ''banked game'' does not include a controlled game if the published rules of the game feature a player-dealer position and provide that this position must be continuously and systematically rotated amongst each of the participants during the play of the game, ensure that the player-dealer is able to win or lose only a fixed and limited wager during the play of the game, and preclude the house, another entity, a player, or an observer from maintaining or operating as a bank during the course of the game. For purposes of this section it is not the intent of the Legislature to mandate acceptance of the deal by every player if the division finds that the rules of the game render the maintenance of or operation of a bank impossible by other means. The house shall not occupy the player-dealer position.

(d) ''Commission'' means the California Gambling Control Commission.

(e) ''Controlled gambling'' means to deal, operate, carry on, conduct, maintain, or expose for play any controlled game.

(f) ''Controlled game'' means any controlled game, as defined by subdivision (e) of Section 337j of the Penal Code.

(g) ''Director,'' when used in connection with a corporation, means any director of a corporation or any person performing similar functions with respect to any organization. In any other case, ''director'' means the Director of the Division of Gambling Control.

(h) ''Division'' means the Division of Gambling Control in the Department of Justice.

(i) ''Finding of suitability'' means a finding that a person meets the qualification criteria described in subdivisions (a) and (b) of Section 19857, and that the person would not be disqualified from holding a state gambling license on any of the grounds specified in Section 19859.

(j) ''Game'' and ''gambling game'' means any controlled game.

(k) ''Gambling'' means to deal, operate, carry on, conduct, maintain, or expose for play any controlled game.

(*l*) ''Gambling enterprise employee'' means any natural person employed in the operation of a gambling enterprise, including, without limitation, dealers, floor personnel, security employees, countroom personnel, cage personnel, collection personnel, surveillance personnel, data-processing personnel, appropriate maintenance personnel, waiters and waitresses, and secretaries, or any other natural person whose employment duties require or authorize access to restricted gambling establishment areas.

(m) ''Gambling establishment,'' ''establishment,'' or ''licensed premises'' except as otherwise defined in Section 19812, means one or more rooms where any controlled gambling or activity directly related thereto occurs.

(n) ''Gambling license'' or ''state gambling license'' means any license issued by the state that authorizes the person named therein to conduct a gambling operation.

(o) ''Gambling operation'' means exposing for play one or more controlled games that are dealt, operated, carried on, conducted, or maintained for commercial gain.

(p) ''Gross revenue'' means the total of all compensation received for conducting any controlled game, and includes interest received in payment for credit extended by an owner licensee to a patron for purposes of gambling, except as provided by regulation.

(q) ''House'' means the gambling establishment, and any owner, shareholder, partner, key employee, or landlord thereof.

(r) ''Independent agent,'' except as provided by regulation, means any person who does either of the following:

(1) Collects debt evidenced by a credit instrument.

(2) Contracts with an owner licensee, or an affiliate thereof, to provide services consisting of arranging transportation or lodging for guests at a gambling establishment.

(s) ''Institutional investor'' means any retirement fund administered by a public agency for the exclusive benefit of federal, state, or local public employees, any investment company registered under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.), any collective investment trust organized by banks under Part Nine of the Rules of the Comptroller of the Currency, any closed-end investment trust, any chartered or licensed life insurance company or property and casualty insurance company, any banking and other chartered or licensed lending institution, any investment advisor registered under the Investment Advisors Act of 1940 (15 U.S.C. Sec. 80b-1 et seq.) acting in that capacity, and other persons as the commission may determine for reasons consistent with the policies of this chapter.

(t) ''Key employee'' means any natural person employed in the operation of a gambling enterprise in a supervisory capacity or empowered to make discretionary decisions that regulate gambling operations, including, without limitation, pit bosses, shift bosses, credit executives, cashier operations supervisors, gambling operation managers and assistant managers, managers or supervisors of security employees, or any other natural person designated as a key employee by the division for reasons consistent with the policies of this chapter.

(u) ''Key employee license'' means a state license authorizing the holder to be associated with a gambling enterprise as a key employee.

(v) ''Licensed gambling establishment'' means the gambling premises encompassed by a state gambling license.

(w) ''Limited partnership'' means a partnership formed by two or more persons having as members one or more general partners and one or more limited partners.

(x) ''Limited partnership interest'' means the right of a general or limited partner to any of the following:

(1) To receive from a limited partnership any of the following:

(A) A share of the revenue.

(B) Any other compensation by way of income.

(C) A return of any or all of his or her contribution to capital of the limited partnership.

(2) To exercise any of the rights provided under state law.

(y) ''Owner licensee'' means an owner of a gambling enterprise who holds a state gambling license.

(z) ''Person,'' unless otherwise indicated, includes a natural person, corporation, partnership, limited partnership, trust, joint venture, association, or any other business organization.

(aa) ''Player'' means a patron of a gambling establishment who participates in a controlled game.

(bb) ''Player-dealer'' and ''controlled game featuring a player-dealer position'' refer to a position in a controlled game, as defined by the approved rules for that game, in which seated player participants are afforded the temporary opportunity to wager against multiple players at the same table, provided that this position is rotated amongst the other seated players in the game.

(cc) ''Publicly traded racing association'' means a corporation licensed to conduct horse racing and simulcast wagering pursuant to Chapter 4 (commencing with Section 19400) whose stock is publicly traded.

(dd) ''Qualified racing association'' means a corporation licensed to conduct horse racing and simulcast wagering pursuant to Chapter 4 (commencing with Section 19400) that is a wholly owned subsidiary of a corporation whose stock is publicly traded.

(ee) ''Work permit'' means any card, certificate, or permit issued by the commission, or by a county, city, or city and county, whether denominated as a work permit, registration card, or otherwise, authorizing the holder to be employed as a gambling enterprise employee or to serve as an independent agent. A document issued by any governmental authority for any employment other than gambling is not a valid work permit for the purposes of this chapter.

SEC. 2. Section 19835.6 of the Business and Professions Code is amended and renumbered to read:

19846. (a) Notwithstanding any other provision of law and except as provided in subdivision (b), a gambling establishment that ejects or excludes an individual based upon Section 19844 or 19845 is not subject to civil liability for a mistake as to the grounds for ejecting or excluding a person if the ejection or exclusion was based upon a reasonable and good faith belief, after a reasonable investigation, that these sections applied to the individual in question.

(b) Notwithstanding subdivision (a), a gambling establishment may not be relieved from liability for any damages arising from the means of ejection or exclusion.

CHAPTER 277

An act to amend Sections 4535.1, 7084, 7118, 14842, and 14842.5 of the Government Code, and to amend Sections 10303 and 12102 of the Public Contract Code, relating to public contracts.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 4535.1 of the Government Code is amended to read:

4535.1. A business that requests and is given the preference provided for in Section 4533, 4533.1, 4534, or 4534.1 by reason of having furnished a false certification, and which by reason of that certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(a) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(b) In addition to the amount specified in subdivision (a), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(c) Be ineligible to directly or indirectly transact any business with the state for a period of not less than six months and not more than 36 months.

Prior to the imposition of any sanction under this chapter, the contractor or vendor shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

SEC. 2. Section 7084 of the Government Code is amended to read:

7084. (a) Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies that demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in an enterprise zone.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies that demonstrate and certify under penalty of perjury that not less than 90 percent of the labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in an enterprise zone.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 5 to 9 percent of its workforce during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 10 to 14 percent of its workforce during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 15 to 19 percent of its workforce during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a targeted employment area or are enterprise zone eligible employees equal to 20 or more percent of its workforce during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However,

in no case shall the maximum preference cost under this section exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other provision of law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference cost would exceed the one hundred thousand dollar ($100,000) maximum preference cost limit, the one hundred thousand dollar ($100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder incentive.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to directly or indirectly transact any business with the state for a period of not less than six months and not more than 36 months.

(2) Prior to the imposition of any sanction under this subdivision, the business shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(h) In each instance in this section an enterprise zone shall also mean any enterprise zone or program area previously authorized under any other provision of state law.

(i) As used in this section, ''enterprise zone eligible employees'' means employees who meet any of the requirements of clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 17053.74, or clause (iv) of subparagraph (A) of paragraph (4) of subdivision (b) of Section 23622.5, of the Revenue and Taxation Code.

SEC. 3. Section 7118 of the Government Code is amended to read:

7118. (a) Whenever the state prepares a solicitation for a contract for goods in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference to California-based companies who demonstrate and certify under penalty of perjury that of the total labor hours required to manufacture the goods and perform the contract, at least 50 percent of the hours shall be accomplished at an identified worksite or worksites located in a local agency military base recovery area.

(b) In evaluating proposals for contracts for services in excess of one hundred thousand dollars ($100,000), except a contract in which the worksite is fixed by the provisions of the contract, the state shall award a 5-percent preference on the price submitted by California-based companies who demonstrate and certify under penalty of perjury that not less than 90 percent of the labor hours required to perform the contract shall be accomplished at an identified worksite or worksites located in a local agency military base recovery area.

(c) Where a bidder complies with subdivision (a) or (b), the state shall award a 1-percent preference for bidders who certify under penalty of perjury to hire persons living within a local agency military base recovery area equal to 5 to 9 percent of its workforce during the period of contract performance; a 2-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 10 to 14 percent of its workforce during the period of contract performance; a 3-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 15 to 19 percent of its workforce during the period of contract performance; and a 4-percent preference for bidders who shall agree to hire persons living within a local agency military base recovery area equal to 20 or more percent of its workforce during the period of contract performance.

(d) The maximum preference a bidder may be awarded pursuant to this chapter and any other provision of law shall be 15 percent. However, in no case shall the maximum preference cost under this section exceed fifty thousand dollars ($50,000) for any bid, nor shall the combined cost of preferences granted pursuant to this section and any other provision of law exceed one hundred thousand dollars ($100,000). In those cases where the 15-percent cumulated preference cost would exceed the one

hundred thousand dollar ($100,000) maximum preference cost limit, the one hundred thousand dollar ($100,000) maximum preference cost limit shall apply.

(e) Notwithstanding any other provision of this section, small business bidders qualified in accordance with Section 14838 shall have precedence over nonsmall business bidders in that the application of any bidder preference for which nonsmall business bidders may be eligible, including the preference contained in this section, shall not result in the denial of the award to a small business bidder. This subdivision shall apply to those cases where the small business bidder is the lowest responsible bidder, as well as to those cases where the small business bidder is eligible for award as the result of application of the 5-percent small business bidder preference.

(f) All state contracts issued to bidders who are awarded preferences under this section shall contain conditions to ensure that the contractor performs the contract at the location specified and meets any commitment to employ persons with high risk of unemployment.

(g) (1) A business that requests and is given the preference provided for in subdivision (a) or (b) by reason of having furnished a false certification, and that by reason of this certification has been awarded a contract to which it would not otherwise have been entitled, shall be subject to all of the following:

(A) Pay to the state any difference between the contract amount and what the state's cost would have been if the contract had been properly awarded.

(B) In addition to the amount specified in subparagraph (A), be assessed a penalty in an amount of not more than 10 percent of the amount of the contract involved.

(C) Be ineligible to directly or indirectly transact any business with the state for a period of not less than six months and not more than 36 months.

(2) Prior to the imposition of any sanction under this subdivision, the business shall be entitled to a public hearing and to five days' notice of the time and place thereof. The notice shall state the reasons for the hearing.

(h) In each instance in this section, a local agency military base recovery area shall also mean any local agency military base recovery area previously authorized under any other provision of state law.

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.

(b) Suspend any person who violates subdivision (a) from transacting any business with the state either directly as a prime contractor or indirectly as a subcontractor, for a period of not less than six months and not more than 36 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.

(c) 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.

(d) All payments to the state pursuant to paragraph (2) of subdivision (a) shall be deposited in the state General Fund.

(e) The small business certification of a business found to have violated subdivision (a) shall be revoked by the department 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.

(f) 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) The department shall revoke the small business or microbusiness certification of any person that violates subdivision (a) 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 six months nor more than 36 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 10303 of the Public Contract Code is amended to read:

10303. The department shall adopt, publish and apply uniform standards of rating bidders, on the basis of questionnaires and required statements, with respect to contracts upon which each bidder is qualified to bid. The department may adopt and publish lists of qualified bidders. No list so adopted and published shall preclude a qualified bidder not on the list from submitting a bid or bids and from being awarded a contract or contracts as the successful bidder.

The department may remove a bidder who has demonstrated a lack of reliability in complying with and completing previously awarded contracts with the state, based upon his or her performance on contracts previously been awarded by the state. The department may remove the bidder from any list of qualified bidders prepared by the department for a period of not less than six months but not to exceed 36 months.

Any bidder temporarily removed under this section shall be returned to the list of qualified bidders at any time after the initial six months, upon demonstrating to the department's satisfaction that the problems that resulted in the bidder's previously demonstrated unreliability in complying with and completing state contracts have been corrected.

SEC. 7. Section 12102 of the Public Contract Code is amended to read:

12102. The Department of General Services shall maintain, in the State Administrative Manual, policies and procedures governing the acquisition and disposal of information technology goods and services.

(a) Acquisition of information technology goods and services shall be conducted through competitive means, except when the Director of General Services determines that (1) the goods and services proposed for acquisition are the only goods and services which can meet the state's need, or (2) the goods and services are needed in cases of emergency where immediate acquisition is necessary for the protection of the public health, welfare, or safety. The acquisition mode to be used and the procedure to be followed shall be approved by the Director of General Services. The Department of General Services shall maintain, in the State Administrative Manual, appropriate criteria and procedures to ensure compliance with the intent of this chapter. These criteria and procedures shall include acquisition and contracting guidelines to be followed by state agencies with respect to the acquisition of information technology goods and services. These guidelines may be in the form of standard formats or model formats.

(b) Contract awards for all large-scale systems integration projects shall be based on the proposal that provides the most value-effective solution to the state's requirements, as determined by the evaluation criteria contained in the solicitation document. Evaluation criteria for the acquisition of information technology goods and services, including

systems integration, shall provide for the selection of a contractor on an objective basis not limited to cost alone.

(1) The Department of General Services shall invite active participation, review, advice, comment, and assistance from the private sector and state agencies in developing procedures to streamline and to make the acquisition process more efficient, including, but not limited to, consideration of comprehensive statements in the request for proposals of the business needs and governmental functions, access to studies, planning documents, feasibility study reports and draft requests for proposals applicable to solicitations, minimizing the time and cost of the proposal submittal and selection process, and development of a procedure for submission and evaluation of a single proposal rather than multiple proposals.

(2) Solicitations for acquisitions based on evaluation criteria other than cost alone shall provide that sealed cost proposals shall be submitted and that they shall be opened at a time and place designated in the solicitation for bids and proposals. Evaluation of all criteria, other than cost, shall be completed prior to the time designated for public opening of cost proposals, and the results of the completed evaluation shall be published immediately before the opening of cost proposals. The state's contact person for administration of the solicitation shall be identified in the solicitation for bids and proposals, and that person shall execute a certificate under penalty of perjury, which shall be made a permanent part of the official contract file, that all cost proposals received by the state have been maintained sealed and under lock and key until the time cost proposals are opened.

(c) The acquisition of hardware acquired independently of a system integration project may be made on the basis of lowest cost meeting all other specifications.

(d) The 5 percent small business preference provided for in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code and the regulations implementing that chapter shall be accorded to all qualifying small businesses.

(e) For all transactions formally advertised, evaluation of bidders' proposals for the purpose of determining contract award for information technology goods shall provide for consideration of a bidder's best financing alternatives, including lease or purchase alternatives, if any bidder so requests, not less than 30 days prior to the date of final bid submission, unless the acquiring agency can prove to the satisfaction of the Department of General Services that a particular financing alternative should not be so considered.

(f) Acquisition authority may be delegated by the Director of General Services to any state agency that has been determined by the Department of General Services to be capable of effective use of that authority. This

authority may be limited by the Department of General Services. Acquisitions conducted under delegated authority shall be reviewed by the Department of General Services on a selective basis.

(g) To the extent practical, the solicitation documents shall provide for a contract to be written to enable acquisition of additional items to avoid essentially redundant acquisition processes when it can be determined that it is economical to do so.

Further, it is the intent of the Legislature that, if a state information technology advisory committee or a state telecommunications advisory committee is established by the Governor, or the Director of General Services, the policies and procedures developed by the Director of General Services in accordance with this chapter shall be submitted to that committee, including supplier representatives, for review and comment, and that the comment be considered by both departments prior to the adoption of any policy or procedure. It is also the intent of the Legislature that this section shall apply to the Department of General Services Information Technology Customer Council.

(h) Protest procedures shall be developed to provide bidders an opportunity to protest any formal, competitive acquisition conducted in accordance with this chapter. The procedures shall provide that protests must be filed no later than five working days after the issuance of an intent to award. Authority to protest may be limited to participating bidders. The Director of General Services, or a person designated by the director, may consider and decide on initial protests. A decision regarding an initial protest shall be final. If prior to the last day to protest, any bidder who has submitted an offer files a protest with the department against the awarding of the contract on the ground that his or her bid or proposal should have been selected in accordance with the selection criteria in the solicitation document, the contract shall not be awarded until either the protest has been withdrawn or the State Board of Control has made a final decision as to the action to be taken relating to the protest. Within 10 calendar days after filing a protest, the protesting bidder shall file with the State Board of Control a full and complete written statement specifying in detail the grounds of the protest and the facts in support thereof.

(i) Information technology goods that have been determined to be surplus to state needs shall be disposed of in a manner that will best serve the interests of the state. Procedures governing the disposal of surplus goods may include auction or transfer to local governmental entities.

(j) A supplier may be excluded from bid processes if the supplier's performance with respect to a previously awarded contract has been unsatisfactory, as determined by the state in accordance with established procedures that shall be maintained in the State Administrative Manual. This exclusion may not exceed 36 months for any one determination of

unsatisfactory performance. Any supplier excluded in accordance with this section shall be reinstated as a qualified supplier at any time during this 36-month period, upon demonstrating to the department's satisfaction that the problems that resulted in the supplier's exclusion have been corrected.

CHAPTER 278

An act to amend Section 19406 of the Business and Professions Code, relating to horse racing, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 19406 of the Business and Professions Code is amended to read:

19406. (a) A ''California-bred horse'' is a foal dropped by a mare in California after being conceived in California and remaining in California until the foal is weaned.

(b) A ''California-bred thoroughbred'' is a horse dropped by a mare in California after being conceived in California, or any thoroughbred horse dropped by a mare in California if the mare remains in California to be next bred to a thoroughbred stallion standing in California. If the mare cannot be bred for two successive breeding seasons but remains in California during that period, her foal shall be considered to be a California-bred thoroughbred.

(c) A ''California-bred quarter horse'' is a quarter horse foal conceived in California by a stallion standing in California at the time of conception.

(d) A ''California-bred standardbred horse'' is a standardbred foal conceived in California by a stallion registered with the California Standardbred Sires Stakes Program.

(e) A ''California-bred Appaloosa horse'' is a horse dropped by a mare in California after being conceived in California, or any Appaloosa horse dropped by a mare in California if the mare remains in California to be next bred to an Appaloosa stallion standing in California. If the mare cannot be bred for two successive breeding seasons but remains in California during that period, her foal shall be considered to be a California-bred Appaloosa horse.

(f) A ''California-bred paint horse'' is a registered paint horse foal conceived in California by a stallion standing in California at the time of the conception, or by a registered paint horse stallion.

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 that foals of mares bred in 2004 may attain California-bred status without regard to place of birth, it is necessary this bill take effect immediately.

CHAPTER 279

An act to amend Sections 1633 and 1749.1 of, and to add Section 1729.2 to, the Insurance Code, relating to insurance licensing.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 1633 of the Insurance Code is amended to read:

1633. Any person who transacts insurance without a valid license so to act is guilty of a misdemeanor punishable by a fine not exceeding fifty thousand dollars ($50,000) or by imprisonment in a county jail for a period not exceeding one year, or by both that fine and imprisonment.

SEC. 2. Section 1729.2 is added to the Insurance Code, to read:

1729.2. (a) An applicant or licensee shall notify the commissioner when any of the background information set forth in this section changes after the application has been submitted or the license has been issued. If the licensee is listed as an endorsee on any business entity license, the licensee shall also provide this notice to any officer, director, or partner listed on that business entity license.

(b) A business entity licensee, upon learning of a change in background information pertaining to any unlicensed person listed on its business entity license or application therefor, shall notify the commissioner of that change. The changes subject to this requirement include changes pertaining to any unlicensed officer, director, partner, member, or controlling person, or any other natural person named under the business entity license or in an application therefor.

(c) The following definitions apply for the purposes of this section:

(1) ''License'' includes all types of licenses issued by the commissioner pursuant to Chapter 5 (commencing with Section 1621), Chapter 5A (commencing with Section 1759), Chapter 6 (commencing with Section 1760), Chapter 6.5 (commencing with Section 1781.1), Chapter 7 (commencing with Section 1800), and Chapter 8 (commencing with Section 1831) of Part 2 of Division 1, Chapter 4 (commencing with Section 12280) of Part 5 of Division 2, and Chapter 1 (commencing with Section 14000) and Chapter 2 (commencing with Section 15000) of Division 5.

(2) ''Background information'' means any of the following: a misdemeanor or felony conviction; a filing of felony criminal charges in state or federal court; an administrative action regarding a professional or occupational license; any licensee's discharge or attempt to discharge, in a personal or organizational bankruptcy proceeding, an obligation regarding any insurance premiums or fiduciary funds owed to any company, including a premium finance company, or managing general agent; and any admission, or judicial finding or determination, of fraud, misappropriation or conversion of funds, misrepresentation, or breach of fiduciary duty.

(3) ''Applicant'' and ''licensee'' include individual and organization applicants and licensees, and officers, directors, partners, members, and controlling persons (as defined in subdivision (b) of Section 1668.5) of an organization.

(d) Notification to the commissioner shall be in writing and shall be sent within 30 days of the date the applicant or licensee learns of the change in background information.

(e) The commissioner may adopt regulations necessary or desirable to implement this section.

SEC. 3. Section 1749.1 of the Insurance Code is amended to read:

1749.1. (a) The commissioner shall appoint a curriculum board consisting of representatives of insurance agents, brokers, and life agents trade associations and representatives of insurance companies and consumer groups to develop the prelicensing and continuing education curriculum, including a list of preapproved courses of study, including courses of study for professional designations which would satisfy the requirements of this article. The curriculum board shall develop or recommend courses of study covering all lines of insurance to be sold under each license including, but not limited to, any special products such as long-term care insurance, Medi-gap policies, disability insurance products, and course study on ethics and pertinent sections of this code. The curriculum developed and the courses of study approved by the board shall be submitted to the commissioner for final approval.

(b) The curriculum board shall also develop standards for providers and instructors of prelicensing and continuing education courses,

programs, and seminars, which standards shall be approved by the board and submitted to the commissioner for final approval.

(c) Whenever the commissioner has reasonable cause to believe, and determines after public hearing, that any approved course, program of instruction, or seminar is being conducted so as to fail to meet the commissioner's prelicensing or continuing education curriculum, or any provider or instructor for any course, program, or seminar has failed to comply with the commissioner's standards, the commissioner may make and serve upon the provider or instructor of that course, program, or seminar an order or orders rescinding approval for that provider, course, program, or seminar, or imposing fines and penalties on that provider, or both. The amount of any fines and penalties shall not exceed the amounts set forth in Section 1748, and shall be based on the criteria for assessing penalties specified in that section. No credit towards meeting the requirements of this article shall be granted any applicant or licensee for completion of a course, program, or seminar after the effective date of any order rescinding approval for that course, program, or seminar. The commissioner shall serve notice of hearing required by this section upon the provider or instructor of the course, program, or seminar, stating the time and place therefor, and the grounds upon which his or her order is made. The hearing shall occur not less than 30 nor more than 60 days after notice is served.

(d) The commissioner may impose monetary penalties for minor instances of noncompliance with the standards established pursuant to this article, such as late course roster submissions and late course presentation schedules. The monetary penalties shall not exceed the amounts of the fees established pursuant to Section 1751.1. The commissioner shall adopt regulations to establish the monetary penalties to be levied against providers for late filings and other minor instances of noncompliance with this article and Article 6.5 of Subchapter 1 of Chapter 5 of Title 10 of the California Code of Regulations.

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 280

An act to amend Section 27801 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 27801 of the Vehicle Code is amended to read:

27801. A person shall not drive a two-wheel motorcycle that is equipped with either of the following:

(a) A seat so positioned that the driver, when sitting astride the seat, cannot reach the ground with his or her feet.

(b) Handlebars so positioned that the hands of the driver, when upon the grips, are more than six inches above his or her shoulder height when sitting astride the seat.

CHAPTER 281

An act to add Section 1871.9 to the Insurance Code, relating to workers' compensation.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. Section 1871.9 is added to the Insurance Code, to read:

1871.9. The department shall post all of the following information on its Internet Web site for each person, as defined in Section 19, convicted of a violation of this article, Section 11760 or 11880, Section 3700.5 of the Labor Code, or Section 487 or 550 of the Penal Code, if the violation involved workers' compensation insurance, services, or benefits:

(a) The name, case number, county or court, and other identifying information with respect to the case.

(b) The full name of the defendant.

(c) The city and county of the defendant's last known residence or business address.

(d) The date of conviction.

(e) A description of the offense.

(f) The amount of money alleged to have been defrauded.

(g) A description of the punishment imposed, including the length of any sentence of imprisonment and the amount of any fine imposed.

The information required to be posted under this section shall be maintained on the department's Web site for a period of five years from the date of conviction or until the department is notified in writing by the person that the conviction has been reversed or expunged.

CHAPTER 282

An act to amend Section 1798.85 of the Civil Code, relating to privacy.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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) Except as provided in this section, 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) 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.

(c) 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.

(d) (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) 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) 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) 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) 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) 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.

(e) 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.

(f) 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 barcode, chip, magnetic strip, or other technology, in place of removing the social security number, as required by this section.

(g) 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).

(h) This section shall become operative with respect to the Franchise Tax Board on January 1, 2007.

(i) This section shall become operative with respect to the California community college districts on January 1, 2007.

(j) This section shall become operative with respect to the California State University system on July 1, 2005.

(k) 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. 2. This act shall become operative on July 1, 2006.

CHAPTER 283

An act to amend Section 121360.5 of the Health and Safety Code, relating to communicable diseases.

[Approved by Governor August 23, 2004. Filed with Secretary of State August 23, 2004.]

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

SECTION 1. It is the intent of the Legislature only to extend the authorization, as amended by this act, for local health departments to certify tuberculin skin test technicians to place and measure tuberculin skin tests.

(b) It is not the intent of the Legislature to make tuberculin skin test technicians responsible for followup or completion of therapy for tuberculosis patients.

SEC. 2. Section 121360.5 of the Health and Safety Code is amended to read:

121360.5. (a) Any city or county health department that elects to participate in this program shall provide for one-year certification of tuberculin skin test technicians by local health officers.

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

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

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

(2) The certified tuberculin skin test technician is working under the supervision of a licensed health professional. For purposes of this section, ''supervision'' means the licensed health professional is immediately available for consultation with the tuberculin skin test technician through telephonic or electronic contact.

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

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

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

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

(2) (A) The person has completed a standardized course approved by the California Tuberculosis Controllers Association (CTCA), which shall include at least 24 hours of instruction in all of the following areas: Didactic instruction on tuberculosis control principles and instruction on the proper placement and measurement of tuberculin skin tests, equipment usage, basic infection control, universal precautions, and appropriate disposal of sharps, needles, and medical waste, client preparation and education, safety, communication, professional behavior, and the importance of confidentiality.

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

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

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

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

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

(h) The local health officer or the tuberculosis controller may deny or revoke the certification of a tuberculin skin test technician if the local

health officer or the tuberculosis controller finds that the technician is not in compliance with this section.

(i) Each county or city participating in the program under this section using tuberculin skin test technicians, that elects to participate on or after January 1, 2005, shall submit to the CTCA a survey and an evaluation of its findings, including a review of the aggregate report, by July 1, 2006, and by July 1 of each year thereafter to, and including, July 1, 2011. The report shall include the following:

(1) The number of persons trained and certified as tuberculin skin test technicians in that city or county.

(2) The estimated number of tuberculin skin tests placed by tuberculin skin test technicians in that city or county.

(j) By July 1, 2008, the CTCA shall submit a summary of barriers to implementing the tuberculosis technician program in the state to the department and to the appropriate policy and fiscal committees of the Legislature.

(k) The local health officer of each participating city or county shall report to the Tuberculosis Control Branch within the department any adverse event that he or she determines has resulted from improper tuberculin skin test technician training or performance.

(*l*) (1) This section, except subdivision (i), shall remain operative only until January 1, 2011.

(2) This section shall remain in effect only until January 1, 2012, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2012, deletes or extends that date.

CHAPTER 284

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 24, 2004.]

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

SECTION 1. This act shall be known and may be cited as the Second Validating Act of 2004.

SEC. 2. As used in this act:

(a) ''Public body'' means the state and all departments, agencies, boards, commissions, and authorities of the state. ''Public body'' also

means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts of any kind.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County flood control and water districts.

County free library systems.

County maintenance districts.

County sanitation districts.

County service areas.

County transportation commissions.

County water agencies.

County water authorities.

County water districts.

County waterworks districts.

Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.

Distribution districts of any public body.

Drainage districts.

Fire protection districts.

Flood control and water conservation districts.

Flood control districts.
Garbage and refuse disposal districts.
Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.

Protection districts.
Public cemetery districts.
Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
School facilities improvement districts.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Special municipal tax districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts' public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) ''Bonds'' means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases,

installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) ''Hereafter'' means any time subsequent to the effective date of this act.

(d) ''Heretofore'' means any time prior to the effective date of this act.

(e) ''Now'' means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the detachment, withdrawal, or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act.

(d) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(e) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, detachment or exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger,

or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to validate the organization, boundaries, acts, proceedings, and bonds of public bodies as soon as possible, it is necessary that this act take immediate effect.

CHAPTER 285

An act to validate the organization, boundaries, acts, proceedings, and bonds of public bodies, and to provide limitations of time wherein actions may be commenced.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 24, 2004.]

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

SECTION 1. This act shall be known and may be cited as the Third Validating Act of 2004.

SEC. 2. As used in this act:

(a) ''Public body'' means the state and all departments, agencies, boards, commissions, and authorities of the state. ''Public body'' also means all counties, cities and counties, cities, districts, authorities, agencies, boards, commissions, and other entities, whether created by a

general statute or a special act, including, but not limited to, the following:

Agencies, boards, commissions, or entities constituted or provided for under or pursuant to the Joint Exercise of Powers Act, Chapter 5 (commencing with Section 6500) of Division 7 of Title 1 of the Government Code.

Air pollution control districts of any kind.

Air quality management districts.

Airport districts.

Assessment districts, benefit assessment districts, and special assessment districts of any public body.

Bridge and highway districts.

California water districts.

Citrus pest control districts.

City maintenance districts.

Community college districts.

Community development commissions.

Community facilities districts.

Community redevelopment agencies.

Community rehabilitation districts.

Community services districts.

Conservancy districts.

Cotton pest abatement districts.

County boards of education.

County drainage districts.

County flood control and water districts.

County free library systems.

County maintenance districts.

County sanitation districts.

County service areas.

County transportation commissions.

County water agencies.

County water authorities.

County water districts.

County waterworks districts.

Department of Water Resources and other agencies acting pursuant to Part 3 (commencing with Section 11100) of Division 6 of the Water Code.

Distribution districts of any public body.

Drainage districts.

Fire protection districts.

Flood control and water conservation districts.

Flood control districts.

Garbage and refuse disposal districts.

Garbage disposal districts.
Geologic hazard abatement districts.
Harbor districts.
Harbor improvement districts.
Harbor, recreation, and conservation districts.
Health care authorities.
Highway districts.
Highway interchange districts.
Highway lighting districts.
Housing authorities.
Improvement districts or improvement areas of any public body.
Industrial development authorities.
Infrastructure financing districts.
Integrated financing districts.
Irrigation districts.
Joint highway districts.
Levee districts.
Library districts.
Library districts in unincorporated towns and villages.
Local agency formation commissions.
Local health care districts.
Local health districts.
Local hospital districts.
Local transportation authorities or commissions.
Maintenance districts.
Memorial districts.
Metropolitan transportation commissions.
Metropolitan water districts.
Mosquito abatement or vector control districts.
Municipal improvement districts.
Municipal utility districts.
Municipal water districts.
Nonprofit corporations.
Nonprofit public benefit corporations.
Open-space maintenance districts.
Parking authorities.
Parking districts.
Permanent road divisions.
Pest abatement districts.
Police protection districts.
Port districts.
Project areas of community redevelopment agencies.
Protection districts.
Public cemetery districts.

Public utility districts.
Rapid transit districts.
Reclamation districts.
Recreation and park districts.
Regional justice facility financing agencies.
Regional park and open-space districts.
Regional planning districts.
Regional transportation commissions.
Resort improvement districts.
Resource conservation districts.
River port districts.
Road maintenance districts.
Sanitary districts.
School districts of any kind or class.
School facilities improvement districts.
Separation of grade districts.
Service authorities for freeway emergencies.
Sewer districts.
Sewer maintenance districts.
Small craft harbor districts.
Special municipal tax districts.
Stone and pome fruit pest control districts.
Storm drain maintenance districts.
Storm drainage districts.
Storm drainage maintenance districts.
Storm water districts.
Toll tunnel authorities.
Traffic authorities.
Transit development boards.
Transit districts.
Unified and union school districts' public libraries.
Vehicle parking districts.
Water agencies.
Water authorities.
Water conservation districts.
Water districts.
Water replenishment districts.
Water storage districts.
Wine grape pest and disease control districts.
Zones, improvement zones, or service zones of any public body.

(b) ''Bonds'' means all instruments evidencing an indebtedness of a public body incurred or to be incurred for any public purpose, all leases, installment purchase agreements, or similar agreements wherein the obligor is one or more public bodies, all instruments evidencing the

borrowing of money in anticipation of taxes, revenues, or other income of that body, all instruments payable from revenues or special funds of those public bodies, all certificates of participation evidencing interests in the leases, installment purchase agreements, or similar agreements, and all instruments funding, refunding, replacing, or amending any thereof or any indebtedness.

(c) ''Hereafter'' means any time subsequent to the effective date of this act.

(d) ''Heretofore'' means any time prior to the effective date of this act.

(e) ''Now'' means the effective date of this act.

SEC. 3. All public bodies heretofore organized or existing under, or under color of, any law, are hereby declared to have been legally organized and to be legally functioning as those public bodies. Every public body, heretofore described, shall have all the rights, powers, and privileges, and be subject to all the duties and obligations, of those public bodies regularly formed pursuant to law.

SEC. 4. The boundaries of every public body as heretofore established, defined, or recorded, or as heretofore actually shown on maps or plats used by the assessor, are hereby confirmed, validated, and declared legally established.

SEC. 5. All acts and proceedings heretofore taken by any public body or bodies under any law, or under color of any law, for the annexation or inclusion of territory into those public bodies or for the annexation of those public bodies to any other public body or for the detachment, withdrawal, or exclusion of territory from any public body or for the consolidation, merger, or dissolution of any public bodies are hereby confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of any public body and of any person, public officer, board, or agency heretofore done or taken upon the question of the annexation or inclusion or of the withdrawal or exclusion of territory or the consolidation, merger, or dissolution of those public bodies.

SEC. 6. All acts and proceedings heretofore taken by or on behalf of any public body under any law, or under color of any law, for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds of any public body for any public purpose are hereby authorized, confirmed, validated, and declared legally effective. This shall include all acts and proceedings of the governing board of public bodies and of any person, public officer, board, or agency heretofore done or taken upon the question of the authorization, issuance, sale, execution, delivery, or exchange of bonds.

All bonds of, or relating to, any public body heretofore issued shall be, in the form and manner issued and delivered, the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any

public body heretofore awarded and sold to a purchaser and hereafter issued and delivered in accordance with the contract of sale and other proceedings for the award and sale shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued by ordinance, resolution, order, or other action adopted or taken by or on behalf of the public body and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. All bonds of, or relating to, any public body heretofore authorized to be issued at an election and hereafter issued and delivered in accordance with that authorization shall be the legal, valid, and binding obligations of the public body. Whenever an election has heretofore been called for the purpose of submitting to the voters of any public body the question of issuing bonds for any public purpose, those bonds, if hereafter authorized by the required vote and in accordance with the proceedings heretofore taken, and issued and delivered in accordance with that authorization, shall be the legal, valid, and binding obligations of the public body.

SEC. 7. (a) This act shall operate to supply legislative authorization as may be necessary to authorize, confirm, and validate any acts and proceedings heretofore taken pursuant to authority the Legislature could have supplied or provided for in the law under which those acts or proceedings were taken.

(b) This act shall be limited to the validation of acts and proceedings to the extent that the same can be effectuated under the state and federal Constitutions.

(c) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter being legally contested or inquired into in any legal proceeding now pending and undetermined or that is pending and undetermined during the period of 30 days from and after the effective date of this act.

(d) This act shall not operate to authorize, confirm, validate, or legalize any act, proceeding, or other matter that has heretofore been determined in any legal proceeding to be illegal, void, or ineffective.

(e) This act shall not operate to authorize, confirm, validate, or legalize a contract between any public body and the United States.

SEC. 8. Any action or proceeding contesting the validity of any action or proceeding heretofore taken under any law, or under color of any law, for the formation, organization, or incorporation of any public body, or for any annexation thereto, detachment or exclusion therefrom, or other change of boundaries thereof, or for the consolidation, merger, or dissolution of any public bodies, or for, or in connection with, the authorization, issuance, sale, execution, delivery, or exchange of bonds thereof upon any ground involving any alleged defect or illegality not

effectively validated by the prior provisions of this act and not otherwise barred by any statute of limitations or by laches shall be commenced within six months of the effective date of this act; otherwise each and all of those matters shall be held to be valid and in every respect legal and incontestable. This act shall not extend the period allowed for legal action beyond the period that it would be barred by any presently existing valid statute of limitations.

SEC. 9. Nothing contained in this act shall be construed to render the creation of any public body, or any change in the boundaries of any public body, effective for purposes of assessment or taxation unless the statement, together with the map or plat, required to be filed pursuant to Chapter 8 (commencing with Section 54900) of Part 1 of Division 2 of Title 5 of the Government Code, is filed within the time and substantially in the manner required by those sections.

CHAPTER 286

An act to repeal Sections 64.5 and 69.8 of the Harbors and Navigation Code, and to amend Sections 5018.1, 5019.11, 5019.15, 6331.5, and 29777 of, to amend the heading of Chapter 1.77 (commencing with Section 5097.993) of Division 5 of, to amend and renumber Sections 5097.993, 5097.994, 5097.995, and 5097.996 of, and to repeal Sections 6226, 22054, 25689, and 30237 of, the Public Resources Code, relating to natural resources.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 24, 2004.]

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

SECTION 1. Section 64.5 of the Harbors and Navigation Code is repealed.

SEC. 2. Section 69.8 of the Harbors and Navigation Code is repealed.

SEC. 3. Section 5018.1 of the Public Resources Code is amended to read:

5018.1. (a) Notwithstanding any other provision of law, the Department of Finance may delegate to the department the right to exercise the same authority granted to the Division of the State Architect and the Real Estate Services Division in the Department of General Services, to plan, design, construct, and administer contracts and professional services for legislatively approved capital outlay projects.

(b) Any right afforded to the department pursuant to subdivision (a) to exercise project planning, design, construction, and administration of contracts and professional services may be revoked, in whole or in part, by the Department of Finance at any time prior to January 1, 2009.

(c) This act 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 5019.11 of the Public Resources Code is amended to read:

5019.11. The department shall file against the fund all claims covering expenditures incurred in connection with services, new construction, major construction and equipment, minor construction, maintenance, improvements, and equipment, and other building and improvement projects.

SEC. 5. Section 5019.15 of the Public Resources Code is amended to read:

5019.15. This article shall become inoperative on January 1, 2012, and, as of January 1, 2013, is repealed, unless a later enacted statute that is enacted before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. The heading of Chapter 1.77 (commencing with Section 5097.993) of Division 5 of the Public Resources Code is amended to read:

CHAPTER 1.77. CALIFORNIA INDIAN HERITAGE CENTER TASK FORCE

SEC. 7. Section 5097.993 of the Public Resources Code is amended and renumbered to read:

5097.997. For the purposes of this chapter, the following terms have the following meanings:

(a) '' Heritage center'' means the California Indian Heritage Center.

(b) ''Task force'' means the California Indian Heritage Center Task Force as described in Section 5097.998.

SEC. 8. Section 5097.994 of the Public Resources Code is amended and renumbered to read:

5097.998. (a) The California Indian Heritage Center Task Force is hereby created within the department. The task force shall be convened by the department on or before February 1, 2003.

(b) The task force shall consist of 9 voting members, appointed as follows:

(1) Three members from separate California Indian tribes, appointed by the director. Each member shall reside in California at the time of appointment. The director shall consider geographic and cultural diversity when making the appointments.

(2) Two members from California Indian tribes shall be appointed by the Executive Secretary of the Native American Heritage Commission. In making these appointments, the executive secretary shall select those individuals who have demonstrated an expertise in any of the following areas:

(A) American Indian education.

(B) California Indian arts, culture, and language.

(C) California Indian history.

(3) One member shall be the director or his or her designee. This member shall serve as the executive secretary of the task force and coordinate work product and assistance with the department.

(4) One member shall be the Executive Secretary of the Native American Heritage Commission or his or her designee.

(5) One member shall be the State Librarian or his or her designee.

(6) One member shall be the Secretary of the Resources Agency or his or her designee.

(c) The task force shall elect a chairperson and determine the term of office of the chairperson by majority vote.

(d) Members of the task force may not receive any state compensation for their services or be reimbursed for travel or per diem expenses.

(e) The duties and responsibilities of the task force shall include, but shall not be limited to, all of the following:

(1) Making recommendations to the department on the potential siting of the heritage center. Every effort shall be made to site the heritage center within proximity of other cultural and historical facilities. The siting recommendations shall also take into consideration the public accessibility of the facility. A task force report on the potential sites for the heritage center shall be delivered to the department no later than one year after the task force is convened.

(2) Advising and making recommendations to the department on the cultural concepts and designs of the heritage center.

(3) Establishing and maintaining communication between tribes, museums, and local, state, and federal agencies.

(4) Requesting and utilizing the advice and services of tribes, museums, and local, state, and federal agencies as needed to carry out the objectives of this chapter.

(5) Developing and recommending to the department a governing structure for the ongoing operation of the heritage center.

(6) Preparing and submitting to the Legislature an annual report detailing the task force's activities and progress towards establishing the heritage center.

(f) The task force's responsibilities shall be complete and its duties discharged when the heritage center is completed and the department has adopted a governing structure for the completed heritage center. The

director may terminate the task force prior to that time, but only if the director obtains approval from two-thirds of the task force members.

(g) The department shall make every effort to encourage nonstate participation and partnerships in the development and construction of the heritage center.

SEC. 9. Section 5097.995 of the Public Resources Code is amended and renumbered to read:

5097.993. (a) (1) A person who unlawfully and maliciously excavates upon, removes, destroys, injures, or defaces a Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, any archaeological or historic site, any inscriptions made by Native Americans at such a site, any archaeological or historic Native American rock art, or any archaeological or historic feature of a Native American historic, cultural, or sacred site, is guilty of a misdemeanor if the act was committed with specific intent to vandalize, deface, destroy, steal, convert, possess, collect, or sell a Native American historic, cultural, or sacred artifact, art object, inscription, or feature, or site, and the act was committed as follows:

(A) On public land.

(B) On private land, by a person, other than the landowner, as described in subdivision (b).

(2) A violation of this section is punishable by imprisonment in the county jail for up to one year, by a fine not to exceed ten thousand dollars ($10,000), or by both that fine and imprisonment.

(b) This section does not apply to any of the following:

(1) An act taken in accordance with, or pursuant to, an agreement entered into pursuant to subdivision (*l*) of Section 5097.94.

(2) An action taken pursuant to Section 5097.98.

(3) An act taken in accordance with the California Environmental Quality Act (Division 13 (commencing with Section 21000)).

(4) An act taken in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. Sec. 4321 et seq.).

(5) An act authorized under the Z'berg-Nejedly Forest Practice Act of 1973 (Chapter 8 (commencing with Section 4511) of Part 2 of Division 4).

(6) An action taken with respect to a conservation easement in accordance with Chapter 4 (commencing with Section 815) of Division 2 of the Civil Code, or any similar nonperpetual enforceable restriction that has as its purpose the conservation, maintenance, or provision of physical access of Native Americans to one or more Native American historic, cultural, or sacred sites, or pursuant to a contractual agreement

for that purpose to which most likely descendents of historic Native American inhabitants are signatories.

(7) An otherwise lawful act undertaken by the owner, or an employee or authorized agent of the owner acting at the direction of the owner, of land on which artifacts, sites, or other Native American resources covered by this section are found, including, but not limited to, farming, ranching, forestry, improvements, investigations into the characteristics of the property conducted in a manner that minimizes adverse impacts unnecessary to that purpose, and the sale, lease, exchange, or financing of real property.

(8) Research conducted under the auspices of an accredited postsecondary educational institution or other legitimate research institution on public land in accordance with applicable permitting requirements or on private land in accordance with otherwise applicable law.

SEC. 10. Section 5097.996 of the Public Resources Code is amended and renumbered to read:

5097.994. (a) A person who violates subdivision (a) of Section 5097.993 is subject to a civil penalty not to exceed fifty thousand dollars ($50,000) per violation.

(b) A civil penalty may be imposed for each separate violation of subdivision (a) in addition to any other civil penalty imposed for a separate violation of any other provision of law.

(c) In determining the amount of a civil penalty imposed pursuant to this section, the court shall take into account the extent of the damage to the resource. In making the determination of damage, the court may consider the commercial or archaeological value of the resource involved and the cost to restore and repair the resource.

(d) A civil action may be brought pursuant to this section by the district attorney, the city attorney, or the Attorney General, or by the Attorney General upon a complaint by the Native American Heritage Commission.

(e) (1) All moneys collected from civil penalties imposed pursuant to this section as a result of an enforcement action brought by a city or county shall be distributed to the city or county treasurer of the city or county that brought the action. These moneys shall be first utilized to repair or restore the damaged site, and the remaining moneys shall be available to that city or county to offset costs incurred in enforcing this chapter.

(2) All moneys collected from civil penalties imposed pursuant to this section as a result of an enforcement action brought by the Attorney General shall be first distributed to, and utilized by, the Native American Heritage Commission to repair or restore the damaged site, and the

remaining moneys shall be available to the Attorney General to offset costs incurred in enforcing this chapter.

SEC. 11. Section 6226 of the Public Resources Code is repealed.

SEC. 12. Section 6331.5 of the Public Resources Code is amended to read:

6331.5. The commission shall make an inventory to ascertain and describe by metes and bounds the location and extent of all ungranted tidelands. The commission shall, in a local agency where the ungranted tideland boundary is described by metes and bounds, acquire and evaluate the existing boundary description to determine whether or not additional surveys should be conducted. When available, the local agency shall provide copies of the descriptions, together with all materials supporting the descriptions, including field notes and other basic data, to the commission at no cost, other than the reproduction cost, to the state.

No appropriation is made by the act adding this section, nor is any obligation created thereby, for the reimbursement of a local agency for any costs, other than reproduction costs, that may be incurred by it in carrying on a program or performing a service required to be carried on or performed by it by this section. Reimbursements for reproduction expenditures shall be made by the commission from appropriations to the commission for the preparation of the inventory.

The commission shall evaluate each survey and shall adopt boundary descriptions already in common use where these metes and bounds descriptions approximate the existing line of ordinary high water where it is in a state of nature, or where the descriptions approximate the last position occupied in a state of nature by the line of ordinary high water in areas where the existing shoreline has ceased to be in a state of nature, and where sound engineering practices were used to conduct the survey. The inventory and evaluation shall commence on January 1, 1976, and shall be completed on or before December 31, 1981. If metes and bounds descriptions of tideland boundaries are not available, or if the surveys do not describe the tideland boundary in a state of nature as hereinbefore defined, or if unsound engineering practices were used to describe a tideland boundary, the commission may conduct its own survey. Unless otherwise provided by law, prior to undertaking a survey on any ungranted tidelands, the commission shall prepare an inventory of those ungranted tidelands which will require a commission survey and shall submit a report of its findings to the Legislature. The report shall contain a geographic identification of the ungranted tidelands that will require a survey, a plan establishing priorities for the orderly conduct of the needed surveys, and an estimate of the cost needed to complete the surveys.

SEC. 13. Section 22054 of the Public Resources Code is repealed.

SEC. 14. Section 25689 of the Public Resources Code is repealed.

SEC. 15. Section 29777 of the Public Resources Code is amended to read:

29777. The commission shall not incur costs in excess of the amount of funds available for expenditure by the commission in any fiscal year.

SEC. 16. Section 30237 of the Public Resources Code is repealed.

CHAPTER 287

An act to amend Sections 44325 and 44329 of the Education Code, relating to credentialing.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 24, 2004.]

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

SECTION 1. Section 44325 of the Education Code is amended to read:

44325. (a) The Commission on Teacher Credentialing shall issue district intern credentials authorizing persons employed by a school district that maintains kindergarten and grades 1 to 12, inclusive, or that maintains classes in bilingual education to provide classroom instruction to pupils in those grades and classes in accordance with the requirements of Section 44830.3. The commission, until January 1, 2008, also shall issue district intern credentials authorizing persons employed by a school district to provide classroom instruction to pupils with mild and moderate disabilities in special education classes, in accordance with the requirements of Section 44830.3.

(b) Each district intern credential is valid for a period of two years. However, a credential may be valid for three years if the intern is participating in a program that leads to the attainment of a specialist credential to teach pupils with mild and moderate disabilities, or four years if the intern is participating in a program that leads to the attainment of both a multiple subject or single subject teaching credential and a specialist credential to teach pupils with mild and moderate disabilities. Upon the recommendation of the school district, the commission may grant a one-year extension of the district intern credential.

(c) The commission shall require each applicant for a district intern credential to demonstrate that he or she meets all of the following minimum qualifications for that credential:

(1) The possession of a baccalaureate degree conferred by a regionally accredited institution of postsecondary education.

(2) The successful passage of the state basic skills proficiency test administered under Sections 44252 and 44252.5.

(3) The successful completion of the appropriate subject matter examination administered by the commission, or a commission-approved subject matter preparation program for the subject areas in which the district intern is authorized to teach.

(4) The oral language component of the assessment program leading to the bilingual-crosscultural language and academic development certificate for persons seeking a district intern credential to teach bilingual education classes.

(d) The commission shall apply the requirements of Sections 44339, 44340, and 44341 to each applicant for a district intern credential.

(e) The commission shall, until January 1, 2008, participate in a pilot program, which may include the San Joaquin County Office of Education and up to five school districts or consortia approved by the commission, to provide teacher preparation programs for teachers of pupils with disabilities in special education classes. Notwithstanding subdivision (a), the commission shall issue district intern credentials authorizing participants in the approved programs to provide classroom instruction to pupils with disabilities in special education classes, in accordance with the requirements of Section 44830.3.

SEC. 2. Section 44329 of the Education Code is amended to read:

44329. On or before January 1, 2007, the commission shall prepare and submit a report to the Legislature that summarizes the regulations adopted by the commission to expand statewide the issuance of district intern certificates that authorize classroom instruction to pupils with mild and moderate disabilities and the pilot program established by subdivision (e) of Section 44325. The report shall also analyze the effectiveness of persons who hold those certificates.

CHAPTER 288

An act to amend Section 1701 of the Labor Code, relating to employment.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 24, 2004.]

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

SECTION 1. Section 1701 of the Labor Code is amended to read:

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

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

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

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

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

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

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

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

(b) ''Advance-fee talent service'' means a person who charges, attempts to charge, or receives an advance fee from an artist for one or more of the following, or for the purchase of any other product or service, including, but not limited to, those described in subdivisions (e) to (i), inclusive, of Section 1701.12, in order to obtain from or through the service one or more of the following:

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

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

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

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

professional services in motion picture, theatrical, radio, television, and other entertainment enterprises.

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

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

SEC. 2. 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 289

An act to amend Sections 3043, 3043.2, 3043.25, and 3043.3 of the Penal Code, relating to parole.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 3043 of the Penal Code is amended to read:

3043. (a) Upon request, notice of any hearing to review or consider the parole suitability or the setting of a parole date for any prisoner in a state prison shall be sent by the Board of Prison Terms at least 30 days before the hearing to any victim of a crime committed by the prisoner, or to the next of kin of the victim if the victim has died. The requesting party shall keep the board apprised of his or her current mailing address.

(b) The victim, next of kin, two members of the victim's immediate family, or two representatives designated for a particular hearing by the victim or, in the event the victim is deceased or incapacitated, by the next of kin in writing prior to the hearing have the right to appear, personally or by counsel, at the hearing and to adequately and reasonably express his, her, or their views concerning the crime and the person responsible, except that any statement provided by a representative designated by the

victim or next of kin shall be limited to comments concerning the effect of the crime on the victim.

(c) A representative designated by the victim or the victim's next of kin for purposes of this section must be either a family or household member of the victim. The board may not permit a representative designated by the victim or the victim's next of kin to provide testimony at a hearing, or to submit a statement to be included in the hearing as provided in Section 3043.2, if the victim, next of kin, or a member of the victim's immediate family is present at the hearing, or if the victim, next of kin, or a member of the victim's immediate family has submitted a statement as described in Section 3043.2.

(d) Nothing in this section is intended to allow the board to permit a victim's representative to attend a particular hearing if the victim, next of kin, or a member of the victim's immediate family is present at any hearing covered in this section, or if the victim, next of kin, or member of the victim's immediate family has submitted a written, audiotaped, or videotaped statement.

(e) The board, in deciding whether to release the person on parole, shall consider the statements of the victim or victims, next of kin, immediate family members of the victim, and the designated representatives of the victim or next of kin, if applicable, made pursuant to this section and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

In those cases where there are more than two immediate family members of the victim who wish to attend any hearing covered in this section, the board may, in its discretion, allow attendance of additional immediate family members or limit attendance to the following order of preference: spouse, children, parents, siblings, grandchildren, and grandparents.

The provisions of this section shall not be amended by the Legislature except by statute passed in each house by rollcall vote entered in the journal, two-thirds of the membership concurring, or by a statute that becomes effective only when approved by the electors.

SEC. 2. Section 3043.2 of the Penal Code is amended to read:

3043.2. (a) (1) In lieu of personal appearance at any hearing to review the parole suitability or the setting of a parole date, the Board of Prison Terms shall permit the victim, his or her next of kin, immediate family members, or two representatives designated for a particular hearing by the victim or next of kin in writing prior to the hearing to file with the board a written, audiotaped, or videotaped statement, or statement stored on a CD Rom, DVD, or any other recording medium accepted by a court pursuant to Section 1191.15 or by the board, expressing his or her views concerning the crime and the person responsible. The statement may be personal messages from the person

to the board made at any time or may be a statement made pursuant to Section 1191.16, or a combination of both, except that any statement provided by a representative designated by the victim or next of kin shall be limited to comments concerning the effect of the crime on the victim.

(2) A representative designated by the victim or the victim's next of kin for purposes of this section must be either a family or household member of the victim.

(3) The board shall consider any statement filed prior to reaching a decision, and shall include in its report a statement of whether the person would pose a threat to public safety if released on parole.

(b) Whenever an audio or video statement or a statement stored on a CD Rom, DVD, or other medium is filed with the board, a written transcript of the statement shall also be provided by the person filing the statement.

(c) Nothing in this section shall be construed to prohibit the prosecutor from representing to the board the views of the victim, his or her immediate family members, or next of kin.

(d) In the event the board permits an audio or video statement or statement stored on a CD Rom, DVD, or other medium to be filed, the board shall not be responsible for providing any equipment or resources needed to assist the victim in preparing the statement.

SEC. 3. Section 3043.25 of the Penal Code is amended to read:

3043.25. Any victim, next of kin, members of the victim's immediate family, or representatives designated for a particular hearing by the victim or next of kin in writing prior to the hearing who have the right to appear at a hearing to review parole suitability or the setting of a parole date, either personally as provided in Section 3043, or by a written, audiotaped, or videotaped statement as provided in Section 3043.2, and any prosecutor who has the right to appear pursuant to Section 3041.7, shall also have the right to appear by means of videoconferencing, if videoconferencing is available at the hearing site. For the purposes of this section, ''videoconferencing'' means the live transmission of audio and video signals by any means from one physical location to another.

SEC. 4. Section 3043.3 of the Penal Code is amended to read:

3043.3. As used in Sections 3043, 3043.1, 3043.2, and 3043.25, the term ''immediate family'' shall include the victim's spouse, parent, grandparent, brother, sister, and children or grandchildren who are related by blood, marriage, or adoption. As used in Sections 3043 and 3043.2, the term ''household member of the victim'' means a person who lives, or was living at the time of the crime, in the victim's

household, and who has, or for a deceased victim had at the time of the crime, an intimate or close relationship with the victim.

CHAPTER 290

An act to amend the heading of Chapter 2.8 (commencing with Section 1001.20) of Title 6 of Part 2 of, and to amend Sections 1001.20, 1001.21, 1001.22, and 1001.23 of, the Penal Code, relating to diversion.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. The heading of Chapter 2.8 (commencing with Section 1001.20) of Title 6 of Part 2 of the Penal Code is amended to read:

CHAPTER 2.8. DIVERSION OF DEFENDANTS WITH COGNITIVE DEVELOPMENTAL DISABILITIES

SEC. 2. Section 1001.20 of the Penal Code is amended to read:

1001.20. As used in this chapter:

(a) ''Cognitive Developmental Disability'' means any of the following:

(1) ''Mental retardation,'' meaning a condition of significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.

(2) ''Autism,'' meaning a diagnosed condition of markedly abnormal or impaired development in social interaction, in communication, or in both, with a markedly restricted repertoire of activity and interests.

(3) Disabling conditions found to be closely related to mental retardation or autism, or that require treatment similar to that required for individuals with mental retardation or autism, and that would qualify an individual for services provided under the Lanterman Developmental Disabilities Services Act.

(b) ''Diversion-related treatment and habilitation'' means, but is not limited to, specialized services or special adaptations of generic services, directed towards the alleviation of cognitive developmental disability or towards social, personal, physical, or economic habilitation or rehabilitation of an individual with a cognitive developmental disability, and includes, but is not limited to, diagnosis, evaluation, treatment,

personal care, day care, domiciliary care, special living arrangements, physical, occupational, and speech therapy, training, education, sheltered employment, mental health services, recreation, counseling of the individual with this disability and of his or her family, protective and other social and socio-legal services, information and referral services, follow-along services, and transportation services necessary to assure delivery of services to persons with cognitive developmental disabilities.

(c) ''Regional center'' means a regional center for the developmentally disabled established under the Lanterman Developmental Disabilities Services Act that is organized as a private nonprofit community agency to plan, purchase, and coordinate the delivery of services which cannot be provided by state agencies to developmentally disabled persons residing in a particular geographic catchment area, and which is licensed and funded by the State Department of Developmental Services.

(d) ''Director of a regional center'' means the executive director of a regional center for the developmentally disabled or his or her designee.

(e) ''Agency'' means the prosecutor, the probation department, and the regional center involved in a particular defendant's case.

(f) ''Dual agency diversion'' means a treatment and habilitation program developed with court approval by the regional center, administered jointly by the regional center and by the probation department, which is individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, and which includes, but is not limited to, treatment specifically addressed to the criminal offense charged, for a specified period of time as prescribed in Section 1001.28.

(g) ''Single agency diversion'' means a treatment and habilitation program developed with court approval by the regional center, administered solely by the regional center without involvement by the probation department, which is individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, and which includes, but is not limited to, treatment specifically addressed to the criminal offense charged, for a specified period of time as prescribed in Section 1001.28.

SEC. 3. Section 1001.21 of the Penal Code is amended to read:

1001.21. (a) This chapter shall apply whenever a case is before any court upon an accusatory pleading at any stage of the criminal proceedings, for any person who has been evaluated by a regional center for the developmentally disabled and who is determined to be a person

with a cognitive developmental disability by the regional center, and who therefore is eligible for its services.

(b) This chapter applies to any offense which is charged as or reduced to a misdemeanor, except that diversion shall not be ordered when the defendant previously has been diverted under this chapter within two years prior to the present criminal proceedings.

(c) This chapter shall apply to persons who have a condition described in paragraph (2) or (3) of subdivision (a) of Section 1001.20 only if that person was a client of a regional center at the time of the offense for which he or she is charged.

SEC. 4. Section 1001.22 of the Penal Code is amended to read:

1001.22. The court shall consult with the prosecutor, the defense counsel, the probation department, and the appropriate regional center in order to determine whether a defendant may be diverted pursuant to this chapter. If the defendant is not represented by counsel, the court shall appoint counsel to represent the defendant. When the court suspects that a defendant may have a cognitive developmental disability, as defined in subdivision (a) of Section 1001.20, and the defendant consents to the diversion process and to his or her case being evaluated for eligibility for regional center services, and waives his or her right to a speedy trial, the court shall order the prosecutor, the probation department, and the regional center to prepare reports on specified aspects of the defendant's case. Each report shall be prepared concurrently.

(a) The regional center shall submit a report to the probation department within 25 judicial days of the court's order. The regional center's report shall include a determination as to whether the defendant has a cognitive developmental disability and is eligible for regional center diversion-related treatment and habilitation services, and the regional center shall also submit to the court a proposed diversion program, individually tailored to the needs of the defendant as derived from the defendant's individual program plan pursuant to Section 4646 of the Welfare and Institutions Code, which shall include, but not be limited to, treatment addressed to the criminal offense charged for a period of time as prescribed in Section 1001.28. The regional center's report shall also contain a statement whether such a proposed program is available for the defendant through the treatment and habilitation services of the regional centers pursuant to Section 4648 of the Welfare and Institutions Code.

(b) The prosecutor shall submit a report on specified aspects of the defendant's case, within 30 judicial days of the court's order, to the court, to each of the other agencies involved in the case, and to the defendant. The prosecutor's report shall include all of the following:

(1) A statement of whether the defendant's record indicates the defendant's diversion pursuant to this chapter within two years prior to the alleged commission of the charged divertible offense.

(2) If the prosecutor recommends that this chapter may be applicable to the defendant, he or she shall recommend either a dual or single agency diversion program and shall advise the court, the probation department, the regional center, and the defendant, in writing, of that determination within 20 judicial days of the court's order to prepare the report.

(3) If the prosecutor recommends against diversion, the prosecutor's report shall include a declaration in writing to state for the record the grounds upon which the recommendation was made, and the court shall determine, pursuant to Section 1001.23, whether the defendant shall be diverted.

(4) If dual agency diversion is recommended by the prosecutor, a copy of the prosecutor's report shall also be provided by the prosecutor to the probation department, the regional center, and the defendant within the above prescribed time period. This notification shall include all of the following:

(A) A full description of the proceedings for diversion and the prosecutor's investigation procedures.

(B) A general explanation of the role and authority of the probation department, the prosecutor, the regional center, and the court in the diversion program process.

(C) A clear statement that the court may decide in a hearing not to divert the defendant and that he or she may have to stand trial for the alleged offense.

(D) A clear statement that should the defendant fail in meeting the terms of his or her diversion, or if, during the period of diversion the defendant is subsequently charged with a felony, the defendant may be required, after a hearing, to stand trial for the original diverted offense.

(c) The probation department shall submit a report on specified aspects of the defendant's case within 30 judicial days of the court's order, to the court, to each of the other agencies involved in the case, and to the defendant. The probation department's report to the court shall be based upon an investigation by the probation department and consideration of the defendant's age, cognitive developmental disability, employment record, educational background, ties to community agencies and family, treatment history, criminal record if any, and demonstrable motivation and other mitigating factors in determining whether the defendant is a person who would benefit from a diversion-related treatment and habilitation program. The regional center's report in full shall be appended to the probation department's report to the court.

SEC. 5. Section 1001.23 of the Penal Code is amended to read:

1001.23. (a) Upon the court's receipt of the reports from the prosecutor, the probation department, and the regional center, and a determination by the regional center that the defendant does not have a cognitive developmental disability, the criminal proceedings for the offense charged shall proceed. If the defendant is found to have a cognitive developmental disability and to be eligible for regional center services, and the court determines from the various reports submitted to it that the proposed diversion program is acceptable to the court, the prosecutor, the probation department, and the regional center, and if the defendant consents to diversion and waives his or her right to a speedy trial, the court may order, without a hearing, that the diversion program be implemented for a period of time as prescribed in Section 1001.28.

(b) After consideration of the probation department's report, the report of the regional center, and the report of the prosecutor relating to his or her recommendation for or against diversion, and any other relevant information, the court shall determine if the defendant shall be diverted under either dual or single agency supervision, and referred for habilitation or rehabilitation diversion pursuant to this chapter. If the court does not deem the defendant a person who would benefit by diversion at the time of the hearing, the suspended criminal proceedings may be reinstituted, or any other disposition as authorized by law may be made, and diversion may be ordered at a later date.

(c) Where a dual agency diversion program is ordered by the court, the regional center shall submit a report to the probation department on the defendant's progress in the diversion program not less than every six months. Within five judicial days after receiving the regional center's report, the probation department shall submit its report on the defendant's progress in the diversion program, with the full report of the regional center appended, to the court and to the prosecutor. Where single agency diversion is ordered by the court, the regional center alone shall report the defendant's progress to the court and to the prosecutor not less than every six months.

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 291

An act to amend Section 25658 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 25658 of the Business and Professions Code is amended to read:

25658. (a) Except as otherwise provided in subdivision (c), every person who sells, furnishes, gives, or causes to be sold, furnished, or given away, any alcoholic beverage to any person under the age of 21 years is guilty of a misdemeanor.

(b) Any person under the age of 21 years who purchases any alcoholic beverage, or any person under the age of 21 years who consumes any alcoholic beverage in any on-sale premises, is guilty of a misdemeanor.

(c) Any person who violates subdivision (a) by purchasing any alcoholic beverage for, or furnishing, giving, or giving away any alcoholic beverage to, a person under the age of 21 years, and the person under the age of 21 years thereafter consumes the alcohol and thereby proximately causes great bodily injury or death to himself, herself, or any other person, is guilty of a misdemeanor.

(d) Any on-sale licensee who knowingly permits a person under the age of 21 years to consume any alcoholic beverage in the on-sale premises, whether or not the licensee has knowledge that the person is under the age of 21 years, is guilty of a misdemeanor.

(e) (1) Except as otherwise provided in paragraph (2) or (3), any person who violates this section shall be punished by a fine of two hundred fifty dollars ($250), no part of which shall be suspended, or the person shall be required to perform not less than 24 hours or more than 32 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court. A second or subsequent violation of subdivision (b) shall be punished by a fine of not more than five hundred dollars ($500), or the person shall be required to perform not less than 36 hours or more than 48 hours of community service during hours when the person is not employed and is not attending school, or a combination of fine and community service as determined by the court. It is the intent of the Legislature that the community service requirements prescribed in this section require service at an alcohol or drug treatment program or facility or at a county coroner's office, if

available, in the area where the violation occurred or where the person resides.

(2) Except as provided in paragraph (3), any person who violates subdivision (a) by furnishing an alcoholic beverage, or causing an alcoholic beverage to be furnished, to a minor shall be punished by a fine of one thousand dollars ($1,000), no part of which shall be suspended, and the person shall be required to perform not less than 24 hours of community service during hours when the person is not employed and is not attending school.

(3) Any person who violates subdivision (c) shall be punished by imprisonment in a county jail for a minimum term of six months not to exceed one year, by a fine not exceeding one thousand dollars ($1,000), or by both imprisonment and fine.

(f) Persons under the age of 21 years may be used by peace officers in the enforcement of this section to apprehend licensees, or employees or agents of licensees, who sell alcoholic beverages to minors. Notwithstanding subdivision (b), any person under the age of 21 years who purchases or attempts to purchase any alcoholic beverage while under the direction of a peace officer is immune from prosecution for that purchase or attempt to purchase an alcoholic beverage. Guidelines with respect to the use of persons under the age of 21 years as decoys shall be adopted and published by the department in accordance with the rulemaking portion 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). Law enforcement-initiated minor decoy programs in operation prior to the effective date of regulatory guidelines adopted by the department shall be authorized as long as the minor decoy displays to the seller of alcoholic beverages the appearance of a person under the age of 21 years. This subdivision shall not be construed to prevent the department from taking disciplinary action against a licensee who sells alcoholic beverages to a minor decoy prior to the department's final adoption of regulatory guidelines. After the completion of every minor decoy program performed under this subdivision, the law enforcement agency using the decoy shall notify licensees within 72 hours of the results of the program. When the use of a minor decoy results in the issuance of a citation, the notification required shall be given within 72 hours of the issuance of the citation. A law enforcement agency may comply with this requirement by leaving a written notice at the licensed premises addressed to the licensee, or by mailing a notice addressed to the licensee.

(g) The penalties imposed by this section do not preclude prosecution under any other provision of law, including, but not limited to, Section 272 of the Penal 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 292

An act to amend Section 11167 of the Penal Code, and to amend Section 16206 of the Welfare and Institutions Code, relating to child protective services.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 11167 of the Penal Code is amended to read:

11167. (a) Reports of suspected child abuse or neglect pursuant to Section 11166 shall include, if known, the name, business address, and telephone number of the mandated reporter, and the capacity that makes the person a mandated reporter; the child's name and address, present location, and, where applicable, school, grade, and class; the names, addresses, and telephone numbers of the child's parents or guardians; the information that gave rise to the reasonable suspicion of child abuse or neglect and the source or sources of that information; and the name, address, telephone number, and other relevant personal information about the person or persons who might have abused or neglected the child. The mandated reporter shall make a report even if some of this information is not known or is uncertain to him or her.

(b) Information relevant to the incident of child abuse or neglect may be given to an investigator from an agency that is investigating the known or suspected case of child abuse or neglect.

(c) Information relevant to the incident of child abuse or neglect, including the investigation report and other pertinent materials, may be given to the licensing agency when it is investigating a known or suspected case of child abuse or neglect.

(d) (1) The identity of all persons who report under this article shall be confidential and disclosed only among agencies receiving or investigating mandated reports, to the district attorney in a criminal

prosecution or in an action initiated under Section 602 of the Welfare and Institutions Code arising from alleged child abuse, or to counsel appointed pursuant to subdivision (c) of Section 317 of the Welfare and Institutions Code, or to the county counsel or district attorney in a proceeding under Part 4 (commencing with Section 7800) of Division 12 of the Family Code or Section 300 of the Welfare and Institutions Code, or to a licensing agency when abuse or neglect in out-of-home care is reasonably suspected, or when those persons waive confidentiality, or by court order.

(2) No agency or person listed in this subdivision shall disclose the identity of any person who reports under this article to that person's employer, except with the employee's consent or by court order.

(e) Notwithstanding the confidentiality requirements of this section, a representative of a child protective services agency performing an investigation that results from a report of suspected child abuse or neglect made pursuant to Section 11166, at the time of the initial contact with the individual who is subject to the investigation, shall advise the individual of the complaints or allegations against him or her, in manner that is consistent with laws protecting the identity of the reporter under this article.

(f) Persons who may report pursuant to subdivision (e) of Section 11166 are not required to include their names.

SEC. 2. Section 16206 of the Welfare and Institutions Code is amended to read:

16206. (a) The purpose of the program is to develop and implement statewide coordinated training programs designed specifically to meet the needs of county child protective services social workers assigned emergency response, family maintenance, family reunification, permanent placement, and adoption responsibilities. It is the intent of the Legislature that the program include training for other agencies under contract with county welfare departments to provide child welfare services. In addition, the program shall provide training programs for persons defined as a mandated reporter pursuant to the Child Abuse and Neglect Reporting Act, Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code. The program shall provide the services required in this section to the extent possible within the total allocation. If allocations are insufficient, the department, in consultation with the grantee or grantees and the Child Welfare Training Advisory Board, shall prioritize the efforts of the program, giving primary attention to the most urgently needed services. County child protective services social workers assigned emergency response responsibilities shall receive first priority for training pursuant to this section.

(b) The training program shall provide practice-relevant training for mandated child abuse reporters and all members of the child welfare delivery system that will address critical issues affecting the well-being of children, and shall develop curriculum materials and training resources for use in meeting staff development needs of mandated child abuse reporters and child welfare personnel in public and private agency settings.

(c) The training provided pursuant to this section shall include all of the following:

(1) Crisis intervention.

(2) Investigative techniques.

(3) Rules of evidence.

(4) Indicators of abuse and neglect.

(5) Assessment criteria, including the application of guidelines for assessment of relatives for placement according to the criteria described in Section 361.3.

(6) Intervention strategies.

(7) Legal requirements of child protection, including requirements of child abuse reporting laws.

(8) Case management.

(9) Use of community resources.

(10) Information regarding the dynamics and effects of domestic violence upon families and children, including indicators and dynamics of teen dating violence.

(11) Posttraumatic stress disorder and the causes, symptoms, and treatment of posttraumatic stress disorder in children.

(12) The importance of maintaining relationships with individuals who are important to a child in out-of-home placement, including methods to identify those individuals, consistent with the child's best interests, including, but not limited to, asking the child about individuals who are important, and ways to maintain and support those relationships.

(13) The legal duties of a child protective services social worker, in order to protect the legal rights and safety of children and families from the initial time of contact during investigation through treatment.

(d) The training provided pursuant to this section may also include any or all of the following:

(1) Child development and parenting.

(2) Intake, interviewing, and initial assessment.

(3) Casework and treatment.

(4) Medical aspects of child abuse and neglect.

(e) The training program shall assess the program's performance at least annually and forward it to the State Department of Social Services for an evaluation and report to the Legislative Analyst. The first report

shall be forwarded to the Legislative Analyst no later than January 1, 1990, and on the first of January in any subsequent years. The assessment shall include at minimum the following:

(1) The number of persons trained.

(2) The type of training provided.

(3) The degree to which the training is perceived by participants as useful in practice.

(f) The training program shall provide practice-relevant training to county child protective services social workers who screen referrals for child abuse or neglect and for all workers assigned to provide emergency response, family maintenance, family reunification, and permanent placement services. The training shall be developed in consultation with the Child Welfare Training Advisory Board and domestic violence victims' advocates and other public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators.

CHAPTER 293

An act to amend Section 977.2 of the Penal Code, relating to criminal procedure.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 977.2 of the Penal Code is amended to read:

977.2. (a) Notwithstanding Section 977 or any other law, in any case in which the defendant is charged with a misdemeanor or a felony and is currently incarcerated in the state prison, the Department of Corrections may arrange for all court appearances in superior court, except for the preliminary hearing, trial, judgment and sentencing, and motions to suppress, to be conducted by two-way electronic audiovideo communication between the defendant and the courtroom in lieu of the physical presence of the defendant in the courtroom. Nothing in this section shall be interpreted to eliminate the authority of the court to issue an order requiring the defendant to be physically present in the courtroom in those cases where the court finds circumstances that require the physical presence of the defendant in the courtroom. For those court appearances that the department determines to conduct by two-way electronic audiovideo communication, the department shall arrange for two-way electronic audiovideo communication between the

superior court and any state prison facility located in the county. The department shall provide properly maintained equipment and adequately trained staff at the prison as well as appropriate training for court staff to ensure that consistently effective two-way communication is provided between the prison facility and the courtroom for all appearances that the department determines to conduct by two-way electronic audiovideo communication.

(b) If the defendant is represented by counsel, the attorney shall be present with the defendant at the initial court appearance and arraignment, and may enter a plea during the arraignment. However, if the defendant is represented by counsel at an initial hearing in superior court in a felony case, and if the defendant does not plead guilty or nolo contendere to any charge, the attorney shall be present with the defendant or if the attorney is not present with the defendant, the attorney shall be present in court during the hearing.

(c) In lieu of the physical presence of the defendant's counsel at the institution with the defendant, the court and the department shall establish a confidential telephone and facsimile transmission line between the court and the institution for communication between the defendant's counsel in court and the defendant at the institution. In this case, counsel for the defendant shall not be required to be physically present at the institution during any court appearance that is conducted via electronic audiovideo communication. Nothing in this section shall be construed to prohibit the physical presence of the defense counsel with the defendant at the state prison.

CHAPTER 294

An act to amend Sections 1725 and 1766 of the Business and Professions Code, relating to healing arts, and making an appropriation therefor.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 1725 of the Business and Professions Code is amended to read:

1725. The amount of the fees prescribed by this chapter that relate to the licensing of dental auxiliaries shall be established by board resolution and subject to the following limitations:

(a) The application fee for an original license shall not exceed twenty dollars ($20).

(b) The fee for examination for licensure as a registered dental assistant shall not exceed fifty dollars ($50) for the written examination and shall not exceed sixty dollars ($60) for the practical examination.

(c) The fee for examination for licensure as a registered dental assistant in extended functions shall not exceed two hundred fifty dollars ($250).

(d) The fee for examination for licensure as a registered dental hygienist shall not exceed two hundred twenty dollars ($220).

(e) For third- and fourth-year dental students, the fee for examination for licensure as a registered dental hygienist shall not exceed the actual cost of the examination.

(f) The fee for examination for licensure as a registered dental hygienist in extended functions shall not exceed two hundred fifty dollars ($250).

(g) The board shall establish the fee at an amount not to exceed the actual cost for licensure as a registered dental hygienist in alternative practice.

(h) The biennial renewal fee for a dental auxiliary whose license expires on or after January 1, 1991, shall not exceed sixty dollars ($60). On or after January 1, 1992, the board may set the renewal fee in an amount not to exceed eighty dollars ($80).

(i) The delinquency fee shall not exceed twenty-five dollars ($25) or one-half of the renewal fee, whichever is greater. Any delinquent license may be restored only upon payment of all fees, including the delinquency fee.

(j) The fee for issuance of a duplicate registration, license, or certificate to replace one that is lost or destroyed, or in the event of a name change, shall not exceed twenty-five dollars ($25).

(k) The fee for each curriculum review and site evaluation for educational programs for registered dental assistants which are not accredited by a board-approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's office of the California Community Colleges shall not exceed one thousand four hundred dollars ($1,400).

(*l*) The fee for each curriculum review and site evaluation for radiation safety courses that are not accredited by a board-approved agency, the Council for Private Postsecondary and Vocational Education, or the Chancellor's office of the California Community Colleges shall not exceed three hundred dollars ($300).

(m) No fees or charges other than those listed in subdivisions (a) through (k) above shall be levied by the board in connection with the licensure of dental auxiliaries, registered dental assistants educational

program site evaluations and radiation safety course site evaluations pursuant to this chapter.

(n) Fees fixed by the board pursuant to this section shall not be subject to the approval of the Office of Administrative Law.

(o) Fees collected pursuant to this section shall be deposited in the State Dental Auxiliary Fund.

SEC. 2. Section 1766 of the Business and Professions Code is amended to read:

1766. (a) The board shall license as a registered dental hygienist a person who satisfies all of the following requirements:

(1) Completion of an educational program for registered dental hygienists, approved by the board, and accredited by the Commission on Dental Accreditation, and conducted by a degree-granting, postsecondary institution.

(2) Satisfactory performance on an examination required by the board.

(3) Satisfactory completion of a national written dental hygiene examination approved by the board.

(b) The board may grant a license as a registered dental hygienist to an applicant who has not taken an examination before the board, if the applicant submits all of the following to the board:

(1) A completed application form and all fees required by the board.

(2) Proof of a current license as a registered dental hygienist issued by another state that is not revoked, suspended, or otherwise restricted.

(3) Proof that the applicant has been in clinical practice as a registered dental hygienist or has been a full-time faculty member in an accredited dental hygiene education program for a minimum of 750 hours per year for at least five years preceding the date of his or her application under this section. The clinical practice requirement shall be deemed met if the applicant provides proof of at least three years of clinical practice and commits to completing the remaining two years of clinical practice by filing with the board a copy of a pending contract to practice dental hygiene in any of the following facilities:

(A) A primary care clinic licensed under subdivision (a) of Section 1204 of the Health and Safety Code.

(B) A primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code.

(C) A clinic owned or operated by a public hospital or health system.

(D) A clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

(4) Proof that the applicant has not been subject to disciplinary action by any state in which he or she is or has been previously licensed as a registered dental hygienist or dentist. If the applicant has been subject

to disciplinary action, the board shall review that action to determine if it warrants refusal to issue a license to the applicant.

(5) Proof of graduation from a school of dental hygiene accredited by the Commission on Dental Accreditation.

(6) Proof of satisfactory completion of the Dental Hygiene National Board Examination and of a state or regional clinical licensure examination.

(7) Proof that the applicant has not failed the examination for licensure to practice dental hygiene under this chapter more than once or once within five years prior to the date of his or her application for a license under this section.

(8) Documentation of completion of a minimum of 25 units of continuing education earned in the two years preceding application, including completion of any continuing education requirements imposed by the board on registered dental hygienists licensed in this state at the time of application.

(9) Any other information as specified by the board to the extent that it is required of applicants for licensure by examination under this article.

(c) The board may periodically request verification of compliance with the requirements of paragraph (3) of subdivision (b), and may revoke the license upon a finding that the employment requirement or any other requirement of paragraph (3) has not been met.

(d) The board shall provide in the application packet to each out-of-state dental hygienist pursuant to this section the following information:

(1) The location of dental manpower shortage areas in the state.

(2) Any not-for-profit clinics, public hospitals, and accredited dental hygiene education programs seeking to contract with licensees for dental hygiene service delivery or training purposes.

(e) The board shall review the impact of this section on the availability of actively practicing dental hygienists in California and report to the appropriate policy and fiscal committees of the Legislature by January 1, 2006. The report shall include a separate section providing data specific to dental hygienists who intend to fulfill the alternative clinical practice requirements of subdivision (b). The report shall include, but not be limited to, the following:

(1) The number of applicants from other states who have sought licensure.

(2) The number of dental hygienists from other states licensed pursuant to this section, the number of licenses not granted under this section, and the reason why the license was not granted.

(3) The practice location of dental hygienists licensed pursuant to this section.

(4) The number of dental hygienists licensed pursuant to this section who establish a practice in a rural area or in an area designated as having a shortage of practicing dental hygienists or no dental hygienists or in a safety net facility identified in paragraph (3) of subdivision (b).

(5) The length of time dental hygienists licensed pursuant to this section practiced in the reported location.

(f) In identifying a dental hygienist's location of practice, the board shall use medical service study areas or other appropriate geographic descriptions for regions of the state.

(g) (1) The board shall license as a registered dental hygienist a third- or fourth-year dental student who is in good standing at an accredited California dental school and who satisfies the following requirements:

(A) Satisfactorily performs on an examination required by the board.

(B) Satisfactorily completes a national written dental hygiene examination approved by the board.

(2) A dental student who is granted a registered dental hygienist license pursuant to this subdivision may only practice in a dental practice that serves patients who are insured under Denti-Cal, the Healthy Families Program, or other government programs, or a dental practice that has a sliding scale fee system based on income.

(3) Upon receipt of a license to practice dentistry pursuant to Section 1634, a registered dental hygiene license issued pursuant to this subdivision is automatically revoked.

(4) The dental hygiene license is granted for two years upon passage of the dental hygiene examination, without the ability for renewal.

(5) Notwithstanding paragraph (4), if a dental student fails to remain in good standing at an accredited California dental school, or fails to graduate from the dental program, a registered dental hygiene license issued pursuant to this subdivision shall be revoked. The student shall be responsible for submitting appropriate verifying documentation to the board.

(6) The provisions of paragraphs (1) and (2) shall be reviewed pursuant to Division 1.2 (commencing with Section 473). However, the review shall be limited to the fiscal feasibility and impact on the board.

(7) This subdivision is inoperative as of January 1, 2009.

SEC. 3. The sum of one hundred thirty-eight thousand dollars ($138,000) in the 2004–05 fiscal year, and the sum of two hundred sixty-four thousand dollars ($264,000) in the 2005–06 fiscal year and subsequent fiscal years, is hereby appropriated from the State Dental Auxiliary Fund to the Committee on Dental Auxiliaries for operating expenses necessary to manage the dental hygiene licensing examination.

CHAPTER 295

An act to add Section 653y to the Penal Code, relating to public safety services.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The purpose of this section is to ensure the availability of an enhanced ''911'' telephone system for the prime purpose of quick response to emergency situations, and to reduce false or nonemergency use of the system.

(b) The proper use of the 911 telephone system will allow the efficient use of available resources to respond to incidences of real emergency.

(c) The improper use of the 911 telephone system unnecessarily delays and obstructs public safety entities in the performance of their duties.

SEC. 2. Section 653y is added to the Penal Code, to read:

653y. (a) Any person who knowingly allows the use or who uses the 911 telephone system for any reason other than because of an emergency is guilty of an infraction, punishable as follows:

(1) For a first or second violation, a written warning shall be issued to the violator by the public safety entity originally receiving the call describing the punishment for subsequent violations. The written warning shall inform the recipient to notify the issuing agency that the warning was issued inappropriately if the recipient did not make, or knowingly allow the use of the 911 telephone system for, the nonemergency 911 call. The law enforcement agency may provide educational materials regarding the appropriate use of the 911 telephone system.

(2) For a third or subsequent violation, a citation may be issued by the public safety entity originally receiving the call pursuant to which the violator shall be subject to the following penalties that may be reduced by a court upon consideration of the violator's ability to pay:

(A) For a third violation, a fine of fifty dollars ($50).

(B) For a fourth violation, a fine of one hundred dollars ($100).

(C) For a fifth or subsequent violation, a fine of two hundred dollars ($200).

(b) The parent or legal guardian having custody and control of an unemancipated minor who violates this section shall be jointly and severally liable with the minor for the fine imposed pursuant to this section.

(c) For purposes of this section, ''emergency'' means any condition in which emergency services will result in the saving of a life, a reduction in the destruction of property, quicker apprehension of criminals, or assistance with potentially life-threatening medical problems, a fire, a need for rescue, an imminent potential crime, or a similar situation in which immediate assistance is required.

(d) Notwithstanding subdivision (a), this section shall not apply to a telephone corporation or any other entity for acts or omissions relating to the routine maintenance, repair, or operation of the 911 or 311 telephone system.

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 296

An act to add Chapter 1.5 (commencing with Section 13995.150) to Part 4.7 of Division 3 of Title 2 of the Government Code, relating to tourism, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Chapter 1.5 (commencing with Section 13995.150) is added to Part 4.7 of Division 3 of Title 2 of the Government Code, to read:

CHAPTER 1.5. CALIFORNIA WELCOME CENTERS

13995.150. The Legislature finds and declares that a statewide network of visitor information centers, to be known as California Welcome Centers, that are readily accessible to and recognizable by tourists, would encourage tourism in California and provide benefits to the state economy.

13995.151. For the purpose of establishing and enhancing a statewide network of California Welcome Centers, the Office of Tourism shall perform the following functions and activities:

(a) Designate a statewide network of California Welcome Centers to be operated by one or more entities that include, but are not limited to, convention centers and visitor bureaus, chambers of commerce, local governments, state government, federal government, or private entities. The Office of Tourism may designate California Welcome Centers through the solicitation of offers to negotiate or proposals from interested entities. Only an entity that applies for designation as a California Welcome Center may be so designated by the Office of Tourism. Criteria for designation shall include, but not be limited to, accessibility, proximity to tourist attractions, size, appearance, and maintenance. The Office of Tourism may limit the number of designated California Welcome Centers within any geographic area of the state if necessary to prevent an excessive density of centers.

(b) Establish requirements for the operation of a designated California Welcome Center. These requirements shall be included in the written agreement with the operating entity and shall require, at a minimum, that the entity operate at hours convenient to visitors and display visitor information produced by government entities at no cost to those entities. The requirements may vary according to local conditions and needs. An agreement between the state and the operating entity pursuant to this section shall not be construed as an agreement for the provision of services to the state, or by the state. Nothing in this subdivision shall preclude a California Welcome Center from displaying visitor information produced by a tourism-related trade association or any other appropriate entity.

(c) Designate a logo for California Welcome Centers. The words ''California Welcome Center'' and the name of the location of the center, as designated by the Office of Tourism, shall be displayed prominently on the exterior of any California Welcome Center.

(d) Consult with the Department of Transportation in the design and placement of California Welcome Center highway signs to ensure that the design and placement of the highway signs are reasonably consistent with state and federal standards.

(e) (1) Except as provided in paragraph (3), prior to the costs being incurred, collect fees from any entity operating a California Welcome Center in an amount sufficient to cover the costs incurred by the state in administering this section. However, the Department of Transportation may charge centers directly for its initial and ongoing costs and fees related to highway sign production, construction, maintenance, and permitting, pursuant to Section 13995.152.

(2) Fees collected by the Office of Tourism pursuant to paragraph (1) shall be deposited in the Welcome Center Fund, which is hereby established in the State Treasury, to be available, upon appropriation by the Legislature, to the office to cover its costs in implementing this chapter.

(3) Notwithstanding paragraph (1), the office may, for the first 90 days after the effective date of this chapter, incur costs in administering its provisions prior to the collection of fees as described in paragraph (1). These costs shall be reimbursed by the appropriation of funds from the Welcome Center Fund.

13995.152. The Department of Transportation shall, to the maximum extent feasible, install and maintain California Welcome Center highway signs when requested by the Office of Tourism.

13995.153. Costs associated with the ongoing maintenance and operation of centers shall be borne by the entity operating a California Welcome Center.

13995.154. Every entity of state government shall cooperate with the Office of Tourism to further the provisions of this chapter.

13995.155. If the Office of Tourism drafts regulations to implement this chapter, the office shall submit the regulations to the California Tourism Commission for the commission's review prior to the adoption of the regulations.

SEC. 2. (a) The sum of fifty-five thousand dollars ($55,000) is hereby appropriated from the Welcome Center Fund to the Office of Tourism for the 2004–05 fiscal year, for the purposes of Section 13995.151 of the Government Code, including paragraph (3) of subdivision (e) of that section, as added by Section 1 of this act.

(b) Any unencumbered funds remaining from this appropriation as of June 30, 2005, shall revert to the Welcome Center Fund as of that date.

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

In order that the work of the Office of Tourism with respect to the designation of California Welcome Centers may continue at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 297

An act to amend Sections 3412, 3417, 3418, and 3419 of the Penal Code, relating to prisoners.

[Approved by Governor August 24, 2004. Filed with
Secretary of State August 25, 2004.]

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

SECTION 1. Section 3412 of the Penal Code is amended to read:

3412. (a) The Department of Corrections shall provide pediatric care consistent with medical standards and, to the extent feasible, shall be guided by the need to provide the following:

(1) A stable, caregiving, stimulating environment for the children as developed and supervised by professional guidance in the area of child development.

(2) Programs geared to assure the stability of the parent-child relationship during and after participation in the program, to be developed and supervised by appropriate professional guidance. These programs shall, at a minimum, be geared to accomplish the following:

(A) The mother's mental stability.

(B) The mother's familiarity with good parenting and housekeeping skills.

(C) The mother's ability to function in the community, upon parole or release, as a viable member.

(D) The securing of adequate housing arrangements after participation in the program.

(E) The securing of adequate child care arrangements after participation in the program.

(3) Utilization of the least restrictive alternative to incarceration and restraint possible to achieve the objectives of correction and of this chapter consistent with public safety and justice.

(b) (1) The Department of Corrections shall ensure that the children and mothers residing in a community treatment program have access to, and are permitted by the community treatment program to participate in, available local Head Start, Healthy Start, and programs for early childhood development pursuant to the California Children and Families Program (Division 108 (commencing with Section 130100) of the Health and Safety Code).

(2) The community treatment program shall provide each mother with written information about the available local programs, including the telephone numbers for enrolling a child in a program.

(3) The community treatment program shall also provide transportation to program services and otherwise assist and facilitate enrollment and participation for eligible children.

(4) Nothing in this subdivision shall be construed as granting or requiring preferential access or enrollment for children of incarcerated mothers to any of the programs specified in this subdivision.

SEC. 2. Section 3417 of the Penal Code is amended to read:

3417. (a) Subject to reasonable rules and regulations adopted pursuant to Section 3414, the Department of Corrections shall admit to the program any applicant whose child was born prior to the receipt of the inmate by the department, whose child was born after the receipt of the inmate by the department, or who is pregnant, if all of the following requirements are met:

(1) The applicant has a probable release or parole date with a maximum time to be served of six years, calculated after deduction of any possible good time credit.

(2) The applicant was the primary caretaker of the infant prior to incarceration. ''Primary caretaker'' as used in this chapter means a parent who has consistently assumed responsibility for the housing, health, and safety of the child prior to incarceration. A parent who, in the best interests of the child, has arranged for temporary care for the child in the home of a relative or other responsible adult shall not for that reason be excluded from the category, ''primary caretaker.''

(3) The applicant had not been found to be an unfit parent in any court proceeding. An inmate applicant whose child has been declared a dependent of the juvenile court pursuant to Section 300 of the Welfare and Institutions Code shall be admitted to the program only after the court has found that participation in the program is in the child's best interest and that it meets the needs of the parent and child pursuant to paragraph (3) of subdivision (e) of Section 361.5 of the Welfare and Institutions Code. The fact that an inmate applicant's child has been found to come within Section 300 of the Welfare and Institutions Code shall not, in and of itself, be grounds for denying the applicant the opportunity to participate in the program.

(b) The Department of Corrections shall deny placement in the community treatment program if it determines that an inmate would pose an unreasonable risk to the public, or if any one of the following factors exist, except in unusual circumstances or if mitigating circumstances exist, including, but not limited to, the remoteness in time of the commission of the offense:

(1) The inmate has been convicted of any of the following:

(A) A sex offense listed in Section 667.6.

(B) A sex offense requiring registration pursuant to Section 290.

(C) A violent offense listed in subdivision (c) of Section 667.5.

(D) Arson as defined in Sections 450 to 455, inclusive.

(E) The unlawful sale or possession for sale, manufacture, or transportation of controlled substances as defined in Chapter 6 (commencing with Section 11350) of Division 10 of the Health and Safety Code, if large scale for profit as defined by the department.

(2) There is probability the inmate may abscond from the program as evidenced by any of the following:

(A) A conviction of escape, of aiding another person to escape, or of an attempt to escape from a jail or prison.

(B) The presence of an active detainer from a law enforcement agency, unless the detainer is based solely upon warrants issued for failure to appear on misdemeanor Vehicle Code violations.

(3) It is probable the inmate's conduct in a community facility will be adverse to herself or other participants in the program, as determined by the Director of Corrections or as evidenced by any of the following:

(A) The inmate's removal from a community program which resulted from violation of state laws, rules, or regulations governing Department of Corrections' inmates.

(B) A finding of the inmate's guilt of a serious rule violation, as defined by the Director of Corrections, which resulted in a credit loss on one occasion of 91 or more days or in a credit loss on more than one occasion of 31 days or more and the credit has not been restored.

(C) A current written opinion of a staff physician or psychiatrist that the inmate's medical or psychiatric condition is likely to cause an adverse effect upon the inmate or upon other persons if the inmate is placed in the program.

(c) Nothing in this section shall be interpreted to limit the discretion of the Director of Corrections to deny or approve placement when subdivision (b) does not apply.

(d) The Department of Corrections shall determine if the applicant meets the requirements of this section within 30 days of the parent's application to the program. The department shall establish an appeal procedure for the applicant to appeal an adverse decision by the department.

SEC. 3. Section 3418 of the Penal Code is amended to read:

3418. (a) In the case of any inmate who gave birth to a child after the date of sentencing, and in the case of any inmate who gave birth to a child prior to that date and meets the requirements of Section 3417 but has not yet made application for admission to a program, the department shall, at the earliest possible date, but in no case later than the birth of the child, or the receipt of the inmate to the custody of the Department of Corrections, as the case may be, notify the inmate of the provisions of this chapter and provide her with a written application for the program described in this chapter.

(b) The notice provided by the department shall contain, but need not be limited to, guidelines for qualification for, and the timeframe for application to, the program and the process for appealing a denial of admittance.

SEC. 4. Section 3419 of the Penal Code is amended to read:

3419. (a) In the case of any inmate who gives birth after her receipt by the Department of Corrections, the department shall, subject to reasonable rules and regulations promulgated pursuant to Section 3414, provide notice of, and a written application for, the program described in this chapter, and upon her request, declare the inmate eligible to participate in a program pursuant to this chapter if all of the requirements of Section 3417 are met.

(b) The notice provided by the department shall contain, but need not be limited to, guidelines for qualification for, and the timeframe for application to, the program and the process for appealing a denial of admittance.

CHAPTER 298

An act to amend and repeal Section 361.4 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 361.4 of the Welfare and Institutions Code, as amended by Section 6 of Chapter 918 of the Statutes of 2002, is amended to read:

361.4. (a) Prior to placing a child in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall visit the home to ascertain the appropriateness of the placement.

(b) Whenever a child may be placed in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the court or county social worker placing the child shall cause a state and federal level criminal records check to be conducted by an appropriate governmental agency through the California Law Enforcement Telecommunications System pursuant to Section 16504.5. The criminal records check shall be conducted with regard to all persons over the age of 18 years living in the home, and on any other person over the age of 18 years, other than professionals providing professional services to the child, known to the placing entity who may have significant contact with the child, including any person who has a familial or intimate relationship with any person living in the home. A criminal records check may be conducted pursuant to this section on any person over the age of 14 years living in the home who

the county social worker believes may have a criminal record. Within five judicial days following the criminal records check conducted through the California Law Enforcement Telecommunications System, the social worker shall ensure that a fingerprint clearance check of the relative and any other person whose criminal record was obtained pursuant to this subdivision is initiated through the Department of Justice to ensure the accuracy of the criminal records check conducted through the California Law Enforcement Telecommunications System and shall review the results of any criminal records check to assess the safety of the home. The Department of Justice shall forward fingerprint requests for federal level criminal history information to the Federal Bureau of Investigation pursuant to this section.

(c) Whenever a child may be placed in the home of a relative, or a prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall cause a check of the Child Abuse Index pursuant to subdivision (a) of Section 11170 of the Penal Code to be requested from the Department of Justice. The Child Abuse Index check shall be conducted on all persons over the age of 18 years living in the home.

(d) (1) If the fingerprint clearance check indicates that the person has no criminal record, the county social worker and court may consider the home of the relative, prospective guardian, or other child who is not a licensed or certified foster parent for placement of a child.

(2) If the fingerprint clearance check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child shall not be placed in the home, unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child, pursuant to paragraph (3) of this subdivision.

(3) (A) A county may issue a criminal records exemption only if that county has been granted permission by the Director of Social Services to issue criminal records exemptions. The county may file a request with the Director of Social Services seeking permission for the county to establish a procedure to evaluate and grant appropriate individual criminal records exemptions for persons described in subdivision (b). The director shall grant or deny the county's request within 14 days of receipt. The county shall evaluate individual criminal records in accordance with the standards and limitations set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code, and in no event shall the county place a child in the home of a person who is ineligible for an exemption under that provision.

(B) The department shall monitor county implementation of the authority to grant an exemption under this paragraph to ensure that the county evaluates individual criminal records and allows or disallows placements according to the standards set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code.

(4) The department shall conduct an evaluation of the implementation of paragraph (3) through random sampling of county exemption decisions.

(5) The State Department of Social Services shall not evaluate or grant criminal record exemption requests for persons described in subdivision (b), unless the exemption request is made by an Indian tribe pursuant to subdivision (f).

(6) If a county has not requested, or has not been granted, permission by the State Department of Social Services to establish a procedure to evaluate and grant criminal records exemptions, the county may not place a child into the home of a person described in subdivision (b) if any person residing in the home has been convicted of a crime other than a minor traffic violation, except as provided in subdivision (f).

(e) Nothing in this section shall preclude a county from conducting a criminal background check that the county is otherwise authorized to conduct using fingerprints.

(f) Upon request from an Indian tribe, the State Department of Social Services shall evaluate an exemption request, if needed, to allow placement into an Indian home that the tribe has designated for placement under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) that would otherwise be barred under this section. However, if the county with jurisdiction over the child that is the subject of the tribe's request has established an approved procedure pursuant to paragraph (3) of subdivision (d), the tribe may request that the county evaluate the exemption request. Once a tribe has elected to have the exemption request reviewed by either the State Department of Social Services or the county, the exemption decision may only be made by that entity. Nothing in this subdivision limits the duty of a county social worker to evaluate the home for placement or to gather information needed to evaluate an exemption request.

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

SEC. 2. Section 361.4 of the Welfare and Institutions Code, as added by Section 5 of Chapter 918 of the Statutes of 2002, is repealed.

CHAPTER 299

An act to add Section 2603.5 to the Family Code, relating to domestic violence.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 2603.5 is added to the Family Code, to read:

2603.5. The court may, if there is a judgment for civil damages for an act of domestic violence perpetrated by one spouse against the other spouse, enforce that judgment against the abusive spouse's share of community property, if a proceeding for dissolution of marriage or legal separation of the parties is pending prior to the entry of final judgment.

CHAPTER 300

An act to amend Section 22348 of the Vehicle Code, relating to vehicles.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 22348 of the Vehicle Code is amended to read:

22348. (a) Notwithstanding subdivision (b) of Section 22351, a person shall not drive a vehicle upon a highway with a speed limit established pursuant to Section 22349 or 22356 at a speed greater than that speed limit.

(b) A person who drives a vehicle upon a highway at a speed greater than 100 miles per hour is guilty of an infraction punishable, as follows:

(1) Upon a first conviction of a violation of this subdivision, by a fine of not to exceed five hundred dollars ($500). The court may also suspend the privilege of the person to operate a motor vehicle for a period not to exceed 30 days pursuant to Section 13200.5.

(2) Upon a conviction under this subdivision of an offense that occurred within three years of a prior offense resulting in a conviction of an offense under this subdivision, by a fine of not to exceed seven hundred fifty dollars ($750). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to subdivision (a) of Section 13355.

(3) Upon a conviction under this subdivision of an offense that occurred within five years of two or more prior offenses resulting in convictions of offenses under this subdivision, by a fine of not to exceed one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to subdivision (b) of Section 13355.

(c) A vehicle subject to Section 22406 shall be driven in a lane designated pursuant to Section 21655, or if a lane has not been so designated, in the right-hand lane for traffic or as close as practicable to the right-hand edge or curb. When overtaking and passing another vehicle proceeding in the same direction, the driver shall use either the designated lane, the lane to the immediate left of the right-hand lane, or the right-hand lane for traffic as permitted under this code. If, however, specific lane or lanes have not been designated on a divided highway having four or more clearly marked lanes for traffic in one direction, a vehicle may also be driven in the lane to the immediate left of the right-hand lane, unless otherwise prohibited under this code. This subdivision does not apply to a driver who is preparing for a left- or right-hand turn or who is in the process of entering into or exiting from a highway or to a driver who is required necessarily to drive in a lane other than the right-hand lane to continue on his or her intended route.

CHAPTER 301

An act to add Section 3105 to the Family Code, and to add Section 1602 to the Probate Code, relating to visitation.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 3105 is added to the Family Code, to read:

3105. (a) The Legislature finds and declares that a parent's fundamental right to provide for the care, custody, companionship, and management of his or her children, while compelling, is not absolute. Children have a fundamental right to maintain healthy, stable relationships with a person who has served in a significant, judicially approved parental role.

(b) The court may grant reasonable visitation rights to a person who previously served as the legal guardian of a child, if visitation is determined to be in the best interest of the minor child.

(c) In the absence of a court order granting or denying visitation between a former legal guardian and his or her former minor ward, and if a dependency proceeding is not pending, a former legal guardian may maintain an independent action for visitation with his or her former minor ward. If the child does not have at least one living parent, visitation shall not be determined in a proceeding under the Family Code, but shall instead be determined in a guardianship proceeding which may be initiated for that purpose.

SEC. 2. Section 1602 is added to the Probate Code, to read:

1602. (a) The Legislature hereby finds and declares that guardians perform a critical and important role in the lives of minors, frequently assuming a parental role and caring for a child when the child's parent or parents are unable or unwilling to do so.

(b) Upon making a determination that a guardianship should be terminated pursuant to Section 1601, the court may consider whether continued visitation between the ward and the guardian is in the ward's best interest. As part of the order of termination, the court shall have jurisdiction to issue an order providing for ongoing visitation between a former guardian and his or her former minor ward after the termination of the guardianship. The order granting or denying visitation may not be modified unless the court determines, based upon evidence presented, that there has been a significant change of circumstances since the court issued the order and that modification of the order is in the best interest of the child.

(c) A copy of the visitation order shall be filed in any court proceeding relating to custody of the minor. If a prior order has not been filed, and a proceeding is not pending relating to the custody of the minor in the court of any county, the visitation order may be used as the sole basis for opening a file in the court of the county in which the custodial parent resides. While a parent of the child has custody of the child, proceedings for modification of the visitation order shall be determined in a proceeding under the Family Code.

CHAPTER 302

An act to amend Sections 798.16, 798.26, 798.37, and 799.1.5 of, to amend and renumber Section 798.285 of, and to add Section 799.2.5 to, the Civil Code, relating to mobilehome parks.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 798.16 of the Civil Code is amended to read:

798.16. (a) The rental agreement may include other provisions permitted by law, but need not include specific language contained in state or local laws not a part of this chapter.

(b) Management shall return an executed copy of the rental agreement to the homeowner within 15 business days after management has received the rental agreement signed by the homeowner.

SEC. 2. Section 798.26 of the Civil Code is amended to read:

798.26. (a) Except as provided in subdivision (b), the ownership or management of a park shall have no right of entry to a mobilehome without the prior written consent of the resident. The consent may be revoked in writing by the resident at any time. The ownership or management shall have a right of entry upon the land upon which a mobilehome is situated for maintenance of utilities, trees, and driveways, for maintenance of the premises in accordance with the rules and regulations of the park when the homeowner or resident fails to so maintain the premises, and protection of the mobilehome park at any reasonable time, but not in a manner or at a time that would interfere with the resident's quiet enjoyment.

(b) The ownership or management of a park may enter a mobilehome without the prior written consent of the resident in case of an emergency or when the resident has abandoned the mobilehome.

SEC. 3. Section 798.285 of the Civil Code is amended and renumbered to read:

798.28.5. (a) Except as otherwise provided in this section, the management may cause the removal, pursuant to Section 22658 of the Vehicle Code, of a vehicle other than a mobilehome that is parked in the park when there is displayed a sign at each entrance to the park as provided in paragraph (1) of subdivision (a) of Section 22658 of the Vehicle Code.

(b) (1) Management may not cause the removal of a vehicle from a homeowner's or resident's driveway or a homeowner's or resident's designated parking space except if management has first posted on the windshield of the vehicle a notice stating management's intent to remove the vehicle in seven days and stating the specific park rule that the vehicle has violated that justifies its removal. After the expiration of seven days following the posting of the notice, management may remove a vehicle that remains in violation of a rule for which notice has been posted upon the vehicle. If a vehicle rule violation is corrected within seven days after the rule violation notice is posted on the vehicle, the vehicle may not be removed. If a vehicle upon which a rule violation notice has been posted is removed from the park by a homeowner or

resident and subsequently is returned to the park still in violation of the rule stated in the notice, management is not required to post any additional notice on the vehicle, and the vehicle may be removed after the expiration of the seven-day period following the original notice posting.

(2) If a vehicle poses a significant danger to the health or safety of a park resident or guest, or if a homeowner or resident requests to have a vehicle removed from his or her driveway or designated parking space, the requirements of paragraph (1) do not apply, and management may remove the vehicle pursuant to Section 22658 of the Vehicle Code.

SEC. 4. Section 798.37 of the Civil Code is amended to read:

798.37. A homeowner may not be charged a fee for the entry, installation, hookup, or landscaping as a condition of tenancy except for an actual fee or cost imposed by a local governmental ordinance or requirement directly related to the occupancy of the specific site upon which the mobilehome is located and not incurred as a portion of the development of the mobilehome park as a whole. However, reasonable landscaping and maintenance requirements may be included in the park rules and regulations. The management may not require a homeowner or prospective homeowner to purchase, rent, or lease goods or services for landscaping, remodeling, or maintenance from any person, company, or corporation.

SEC. 5. Section 799.1.5 of the Civil Code is amended to read:

799.1.5. A homeowner or resident, or an heir, joint tenant, or personal representative of the estate who gains ownership of a mobilehome through the death of the resident of the mobilehome who was a resident at the time of his or her death, or the agent of any of those persons, may advertise the sale or exchange of his or her mobilehome or, if not prohibited by the terms of an agreement with the management or ownership, may advertise the rental of his or her mobilehome by displaying a sign in the window of the mobilehome, or by a sign posted on the side of the mobilehome facing the street, or by a sign in front of the mobilehome facing the street, stating that the mobilehome is for sale or exchange or, if not prohibited, for rent by the owner of the mobilehome or his or her agent. Any such person also may display a sign conforming to these requirements indicating that the mobilehome is on display for an ''open house,'' unless the park rules prohibit the display of an open house sign. The sign shall state the name, address, and telephone number of the owner of the mobilehome or his or her agent. The sign face may not exceed 24 inches from in width and 36 inches in height. Signs posted in from of a mobilehome pursuant to this section may be of an H-frame or A-frame design with the sign face perpendicular to, but not extending into, the street. A homeowner or resident, or an heir, joint tenant, or personal representative of the estate who gains ownership

of a mobilehome through the death of the resident of the mobilehome who was a resident at the time of his or her death, or the agent of any of those persons, may attach to the sign or their mobilehome tubes or holders for leaflets that provide information on the mobilehome for sale, exchange, or rent.

SEC. 6. Section 799.2.5 is added to the Civil Code, to read:

799.2.5. Except as provided in subdivision (b), the ownership or management shall have no right of entry to a mobilehome without the prior written consent of the resident. The consent may be revoked in writing by the resident at any time. The ownership or management shall have a right of entry upon the land upon which a mobilehome is situated for maintenance of utilities, trees, and driveways, for maintenance of the premises in accordance with the rules and regulations of the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park when the homeowner or resident fails to so maintain the premises, and protection of the subdivision, cooperative, or condominium for mobilehomes, or resident-owned mobilehome park at any reasonable time, but not in a manner or at a time that would interfere with the resident's quiet enjoyment.

(b) The ownership or management may enter a mobilehome without the prior written consent of the resident in case of an emergency or when the resident has abandoned the mobilehome.

CHAPTER 303

An act to amend Sections 67312 and 89009 of the Education Code, and to amend Section 10860 of the Public Contract Code, relating to public postsecondary education.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 67312 of the Education Code is amended to read:

67312. (a) The Board of Governors of the California Community Colleges and the Trustees of the California State University shall, for their respective systems, and the Regents of the University of California may, do the following:

(1) Work with the California Postsecondary Education Commission and the Department of Finance to develop formulas or procedures for allocating funds authorized under this chapter.

(2) Adopt rules and regulations necessary to the operation of programs funded pursuant to this chapter.

(3) Maintain the present intersegmental efforts to work with the California Postsecondary Education Commission and other interested parties, to coordinate the planning and development of programs for students with disabilities, including, but not necessarily limited to, the establishment of common definitions for students with disabilities and uniform formats for reports required under this chapter.

(4) Develop and implement, in consultation with students and staff, a system for evaluating state-funded programs and services for disabled students on each campus at least every five years. At a minimum, these systems shall provide for the gathering of outcome data, staff and student perceptions of program effectiveness, and data on the implementation of the program and physical accessibility requirements of Section 794 of Title 29 of the Federal Rehabilitation Act of 1973.

(b) Commencing in January 1990, and every two years thereafter, the Board of Governors of the California Community Colleges and the Trustees of the California State University shall, for their respective systems, and the Regents of the University of California may, submit a report to the Governor, the education policy committees of the Legislature, and the California Postsecondary Education Commission on the evaluations developed pursuant to subdivision (a). These biennial reports shall also include a review on a campus-by-campus basis of the enrollment, retention, transition, and graduation rates of disabled students.

SEC. 2. Section 89009 of the Education Code is amended to read:

89009. (a) It is the intent of the Legislature that the land and improvements comprising the Camarillo State Hospital be transferred to the trustees to be developed and improved as a campus of the California State University in order to make public postsecondary education more available to qualified persons in the Ventura County area as well as throughout the state.

(b) Upon approval by the trustees, the Department of General Services shall transfer the land and improvements comprising the Camarillo State Hospital to the trustees. The Department of General Services shall be reimbursed for its administrative costs incurred in connection with the transfer, and an amount not to exceed five thousand dollars ($5,000) is hereby appropriated from the General Fund to the department for that purpose.

(c) (1) In order to raise revenues to assist in building a campus of the California State University and to provide a source of funding for the program thereof, the trustees may sell and lease interests in real property included within the land comprising Camarillo State Hospital that are not needed for campus purposes. The proceeds from any sale or lease

pursuant to this section shall be deposited in local trust accounts and are available for expenditure for the improvement of real property of the campus and funding the programs of the campus. Funds so deposited and maintained may be invested in accordance with state law and are continuously appropriated without regard to fiscal year for the purpose of building, maintaining, and funding a campus of the California State University in Ventura County at the site of the Camarillo State Hospital.

(2) By September 1 of every other year, commencing in 2006, the trustees shall report to the Governor and the Legislature on the revenues obtained from sales and leases made pursuant to this subdivision and the expenditures made based upon those revenues during the two prior fiscal years. No report shall be made in 2005.

(d) This section shall be liberally construed to accomplish the intent of the Legislature.

(e) This section does not apply to the approximately 57-acre noncontiguous parcel of the Camarillo State Hospital property located on Lewis Road in Ventura County.

SEC. 3. Section 10860 of the Public Contract Code is amended to read:

10860. (a) The trustees shall revise the procedures and specifications for purchases of paper products to give preference, wherever feasible, to the purchase of paper products containing recycled paper products pursuant to Section 10855.

(b) The trustees shall give purchase preference to recycled paper products when both of the following apply:

(1) The products can be substituted for, and cost no more than, nonrecycled paper products.

(2) The products meet all applicable standards and regulations.

(c) To encourage the use of postconsumer material, the trustees' specifications shall require recycled paper product contracts to be awarded to the bidder whose paper product contains the greater percentage of postconsumer material if the fitness and quality and price meet the requirements in this section and Section 10855.

(d) (1) The trustees shall set the following goals for the purchasing of recycled paper products:

(A) By January 1, 1992, at least 35 percent of the total dollar amount of paper products purchased or procured by the trustees shall be purchased as a recycled paper product.

(B) By January 1, 1994, at least 40 percent of the total dollar amount of paper products purchased or procured by the trustees shall be purchased as a recycled paper product.

(C) By January 1, 1996, at least 50 percent of the total dollar amount of paper products purchased or procured by the trustees shall be purchased as a recycled paper product.

(2) If, at any time a goal has not been met, the trustees and the Department of General Services, in consultation with the California Integrated Waste Management Board, shall review procurement policies and shall make recommendations for immediate revisions to ensure that each goal is met. Revisions include, but are not limited to, providing a purchasing preference and altering the goals.

CHAPTER 304

An act to amend Section 11571.1 of the Health and Safety Code, relating to controlled substances.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 11571.1 of the Health and Safety Code is amended to read:

11571.1. (a) To effectuate the purposes of this article, the city prosecutor or city attorney may file, in the name of the people, an action for unlawful detainer against any person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure, with respect to a controlled substance purpose. In filing this action, which shall be based upon an arrest report or on another action or report by a regulatory or law enforcement agency, the city prosecutor or city attorney shall utilize the procedures set forth in Chapter 4 (commencing with Section 1159) of Title 3 of Part 3 of the Code of Civil Procedure, except that in cases filed under this section, the following also shall apply:

(1) (A) Prior to filing an action pursuant to this section, the city prosecutor or city attorney shall give 30-calendar days' written notice to the owner, requiring the owner to file an action for the removal of the person who is in violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure with respect to a controlled substance purpose.

(B) This notice shall include sufficient documentation establishing a violation of the nuisance or illegal purpose provisions of subdivision 4 of Section 1161 of the Code of Civil Procedure and shall be served upon the owner and the tenant in accordance with subdivision (e) of this section.

(C) The notice to the tenant shall also include on the bottom of its front page, in at least 14-point bold type, the following:

''Notice to Tenant: This notice is not a notice of eviction. However, you should know that an eviction action may soon be filed in court against you for suspected drug activity, as described above. You should call (insert name and telephone number of the city attorney or prosecutor pursuing the action) or legal aid to stop the eviction action if any of the following is applicable:

(i) You are not the person named in this notice.

(ii) The person named in the notice does not live with you.

(iii) The person named in the notice has permanently moved.

(iv) You do not know the person named in the notice.

(v) You have any other legal defense or legal reason to stop the eviction action.

A list of legal assistance providers is attached to this notice. Some provide free legal help if you are eligible.''

(D) The owner shall, within 30-calendar days of the mailing of the written notice, either provide the city prosecutor or city attorney with all relevant information pertaining to the unlawful detainer case, or provide a written explanation setting forth any safety-related reasons for noncompliance, and an assignment to the city prosecutor or city attorney of the right to bring an unlawful detainer action against the tenant.

(E) The assignment shall be on a form provided by the city prosecutor or city attorney and may contain a provision for costs of investigation, discovery, and reasonable attorney's fees, in an amount not to exceed six hundred dollars ($600).

(F) If the city prosecutor or city attorney accepts the assignment of the right of the owner to bring the unlawful detainer action, the owner shall retain all other rights and duties, including the handling of the tenant's personal property, following issuance of the writ of possession and its delivery to and execution by the appropriate agency.

(2) Upon the failure of the owner to file an action pursuant to this section, or to respond to the city prosecutor or city attorney as provided in paragraph (1), or having filed an action, if the owner fails to prosecute it diligently and in good faith, the city prosecutor or city attorney may file and prosecute the action, and join the owner as a defendant in the action. This action shall have precedence over any similar proceeding thereafter brought by the owner, or to one previously brought by the owner and not prosecuted diligently and in good faith. Service of the summons and complaint upon the defendant owner shall be in accordance with Sections 415.10, 415.20, 415.30, 415.40, and 415.50 of the Code of Civil Procedure.

(3) If a jury or court finds the defendant tenant guilty of unlawful detainer in a case filed pursuant to paragraph (2), the city prosecutor or city attorney may be awarded costs, including the costs of investigation and discovery and reasonable attorney's fees. These costs shall be

assessed against the defendant owner, to whom notice was directed pursuant to paragraph (1), and once an abstract of judgment is recorded, it shall constitute a lien on the subject real property.

(4) Nothing in this article shall prevent a local governing body from adopting and enforcing laws, consistent with this article relating to drug abatement. Where local laws duplicate or supplement this article, this article shall be construed as providing alternative remedies and not preempting the field.

(5) Nothing in this article shall prevent a tenant from receiving relief against a forfeiture of a lease pursuant to Section 1179 of the Code of Civil Procedure.

(b) In any proceeding brought under this section, the court may, upon a showing of good cause, issue a partial eviction ordering the removal of any person, including, but not limited to, members of the tenant's household if the court finds that the person has engaged in the activities described in subdivision (a). Persons removed pursuant to this section may be permanently barred from returning to or reentering any portion of the entire premises. The court may further order as an express condition of the tenancy that the remaining tenants shall not give permission to or invite any person who has been removed pursuant to this subdivision to return to or reenter any portion of the entire premises.

(c) For the purposes of this section, ''controlled substance purpose'' means the manufacture, cultivation, importation into the state, transportation, possession, possession for sale, sale, furnishing, administering, or giving away, or providing a place to use or fortification of a place involving, cocaine, phencyclidine, heroin, methamphetamine, or any other controlled substance, in a violation of subdivision (a) of Section 11350, Section 11351, 11351.5, 11352, or 11359, subdivision (a) of Section 11360, or Section 11366, 11366.6, 11377, 11378, 11378.5, 11379, 11379.5, 11379.6, or 11383, if the offense occurs on the subject real property and is documented by the observations of a peace officer.

(d) Notwithstanding subdivision (b) of Section 68097.2 of the Government Code, a public entity may waive all or part of the costs incurred in furnishing the testimony of a peace officer in an unlawful detainer action brought pursuant to this section.

(e) The notice and documentation described in paragraph (1) of subdivision (a) shall be given in writing and may be given either by personal delivery or by deposit in the United States mail in a sealed envelope, postage prepaid, addressed to the owner at the address known to the public entity giving the notice, or as shown on the last equalized assessment roll, if not known. Separate notice of not less than 30-calendar days and documentation shall be provided to the tenant in accordance with this subdivision. Service by mail shall be deemed to be completed at the time of deposit in the United States mail. Proof of

giving the notice may be made by a declaration signed under penalty of perjury by any employee of the public entity which shows service in conformity with this section.

(f) This section shall only apply to the following courts:

(1) In the County of Los Angeles, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of Los Angeles or in the City of Long Beach.

(2) In the County of San Diego, any court having jurisdiction over unlawful detainer cases involving real property situated in the City of San Diego.

(3) In the County of Alameda, any court with jurisdiction over unlawful detainer cases involving real property situated in the City of Oakland.

(g) (1) The city attorney and city prosecutor of each participating jurisdiction shall provide to the Judicial Council the following information:

(A) The number of notices provided pursuant to paragraph (1) of subdivision (a).

(B) The number of cases filed by an owner, upon notice.

(C) The number of assignments executed by owners to the city attorney or city prosecutor.

(D) The number of three-day, 30-day, or 60-day notices issued by the city attorney or city prosecutor.

(E) The number of cases filed by the city attorney or city prosecutor.

(F) The number of times that an owner is joined as a defendant pursuant to this section.

(G) As to each case filed by an owner, the city attorney, or the city prosecutor, the following information:

(i) The number of judgments ordering an eviction or partial eviction (specify whether default, stipulated, or following trial).

(ii) The number of cases, listed by separate categories, in which the case was withdrawn or in which the tenant prevailed.

(iii) The number of other dispositions (specify disposition).

(iv) The number of defendants represented by counsel.

(v) Whether the case was a trial by the court or a trial by a jury.

(vi) Whether an appeal was taken, and, if so, the result of the appeal.

(vi) The number of cases in which partial eviction was requested, and the number of cases in which the court ordered a partial eviction.

(H) As to each case in which a notice was issued, but no case was filed, the following information:

(i) The number of instances in which a tenant voluntarily vacated the unit.

(ii) The number of instances in which a tenant vacated a unit prior to the providing of the notice.

(iii) The number of cases in which the notice provided pursuant to subdivision (a) was erroneously sent to the tenant. (List reasons, if known, for the erroneously sent notice, such as reliance on information on the suspected controlled substance law violator's name or address that was incorrect; clerical error; or any other reason)

(iv) The number of other resolutions (specify resolution).

(2) (A) Information compiled pursuant to this section shall be reported annually to the Judicial Council on or before January 30 of each year.

(B) The Judicial Council shall thereafter submit a brief report to the Senate and Assembly Judiciary Committees once on or before April 15, 2007, and once on or before April 15, 2009, summarizing the information collected pursuant to this section and evaluating the merits of the pilot programs established by this section.

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

SEC. 2. The Legislature finds and declares that a special law is necessary and that a general law cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution because of the unique circumstances surrounding the drug problem in the jurisdictions specified in the bill. The facts constituting the special circumstances that distinguish these court jurisdictions in Los Angeles, San Diego, and Alameda Counties from other jurisdictions are the severity of the drug trafficking problem and the widespread use of rental housing to facilitate drug trafficking.

CHAPTER 305

An act to amend, repeal, and add Section 695.221 of the Code of Civil Procedure, and to amend Sections 4009, 4504, and 17402 of the Family Code, relating to child support.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 695.221 of the Code of Civil Procedure is amended to read:

695.221. Satisfaction of a money judgment for support shall be credited as follows:

(a) The money shall first be credited against the current month's support.

(b) Any remaining money is next to be credited against the accrued interest that remains unsatisfied.

(c) Any remaining money shall be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money shall be credited against the matured installments in the order in which they matured.

(d) In cases enforced pursuant to Part D (commencing with Section 651) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code, if a lump-sum payment is collected from a support obligor who has money judgments for support owing to more than one family, after the implementation of the California Child Support Automation System (CCSAS), all support collected shall be distributed pursuant to guidelines developed by the State Department of Child Support Services.

(e) Notwithstanding subdivisions (a), (b), and (c), a collection received as a result of a federal tax refund offset shall first be credited against the interest and then the principal amount of past due support that has been assigned to the state pursuant to Section 11477 of the Welfare and Institutions Code and federal law prior to the interest and then principal amount of any other past due support remaining unsatisfied.

(f) If federal law does not permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, the following shall be the order of distribution of child support collections through September 30, 2000, except for federal tax refund offset collections, for child support received for families and children who are former recipients of Aid to Families with Dependent Children (AFDC) program benefits or former recipients of Temporary Assistance for Needy Families (TANF) program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children since leaving the AFDC program or the TANF program and then the arrearages.

(3) Any remaining money shall next be credited against interest that accrued on arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then the arrearages.

(4) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then the arrearages.

(g) If federal law does permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, or effective October 1, 2000, whichever comes first, the following shall be the order of distribution of child support collections, except for federal tax refund offset collections, for child support received for families and children who are former recipients of AFDC program benefits or former recipients of TANF program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children since leaving the AFDC program or the TANF program and then the arrearages.

(3) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then the arrearages.

(4) Any remaining money shall next be credited against interest that accrued on arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then the arrearages.

(h) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 2. Section 695.221 is added to the Code of Civil Procedure, to read:

695.221. Satisfaction of a money judgment for support shall be credited as follows:

(a) The money shall first be credited against the current month's support.

(b) Any remaining money shall next be credited against the principal amount of the judgment remaining unsatisfied. If the judgment is payable in installments, the remaining money shall be credited against the matured installments in the order in which they matured.

(c) Any remaining money shall be credited against the accrued interest that remains unsatisfied.

(d) In cases enforced pursuant to Part D (commencing with Section 651) of Subchapter 4 of Chapter 7 of Title 42 of the United States Code, if a lump-sum payment is collected from a support obligor who has money judgments for support owing to more than one family, after the implementation of the California Child Support Automation System (CCSAS), all support collected shall be distributed pursuant to guidelines developed by the State Department of Child Support Services.

(e) Notwithstanding subdivisions (a), (b), and (c), a collection received as a result of a federal tax refund offset shall first be credited against the principal amount of past due support that has been assigned to the state pursuant to Section 11477 of the Welfare and Institutions Code and federal law and then any interest due on that past due support, prior to the principal amount of any other past due support remaining unsatisfied and then any interest due on that past due support.

(f) If federal law does not permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, the following shall be the order of distribution of child support collections through September 30, 2000, except for federal tax refund offset collections, for child support received for families and children who are former recipients of Aid to Families with Dependent Children (AFDC) program benefits or former recipients of Temporary Assistance for Needy Families (TANF) program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children since leaving the AFDC program or the TANF program and then the arrearages.

(3) Any remaining money shall next be credited against interest that accrued on arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then the arrearages.

(4) Any remaining money shall next be credited against interest that accrued on arrearages owed to the family or children prior to receiving benefits from the AFDC program or the TANF program and then the arrearages.

(g) If federal law does permit states to adopt the same order of distribution for the pre- and post-assistance child support arrears effective October 1, 1998, or effective October 1, 2000, whichever comes first, the following shall be the order of distribution of child support collections, except for federal tax refund offset collections, for child support received for families and children who are former recipients of AFDC program benefits or former recipients of TANF program benefits:

(1) The money shall first be credited against the current month's support.

(2) Any remaining money shall next be credited against the principal amount of the arrearages owed to the family or children since leaving the AFDC program or the TANF program and then the interest that accrued on those arrearages.

(3) Any remaining money shall next be credited against the principal amount of the arrearages owed to the family or children prior to receiving

benefits from the AFDC program or the TANF program and then the interest that accrued on those arrearages.

(4) Any remaining money shall next be credited against the principal amount of the arrearages owed during the time the family or children received benefits under the AFDC program or the TANF program and then the interest that accrued on those arrearages.

(h) This section shall become operative on January 1, 2009.

SEC. 3. Section 4009 of the Family Code is amended to read:

4009. An original order for child support may be made retroactive to the date of filing the petition, complaint, or other initial pleading. If the parent ordered to pay support was not served with the petition, complaint, or other initial pleading within 90 days after filing and the court finds that the parent was not intentionally evading service, the child support order shall be effective no earlier than the date of service.

SEC. 4. Section 4504 of the Family Code is amended to read:

4504. (a) If the noncustodial parent is receiving payments from the federal government pursuant to the Social Security Act or Railroad Retirement Act, or from the Department of Veterans Affairs because of the retirement or disability of the noncustodial parent and the noncustodial parent notifies the custodial person, or notifies the local child support agency in a case being enforced by the local child support agency pursuant to Title IV-D of the Social Security Act, then the custodial parent or other child support obligee shall contact the appropriate federal agency within 30 days of receiving notification that the noncustodial parent is receiving those payments to verify eligibility for each child to receive payments from the federal government because of the disability of the noncustodial parent. If the child is potentially eligible for those payments, the custodial parent or other child support obligee shall apply for and cooperate with the appropriate federal agency for the receipt of those benefits on behalf of each child. The noncustodial parent shall cooperate with the custodial parent or other child support obligee in making that application and shall provide any information necessary to complete the application.

(b) If the court has ordered a noncustodial parent to pay for the support of a child, payments for the support of the child made by the federal government pursuant to the Social Security Act or Railroad Retirement Act, or by the Department of Veterans Affairs because of the retirement or disability of the noncustodial parent and received by the custodial parent or other child support obligee shall be credited toward the amount ordered by the court to be paid by the noncustodial parent for support of the child unless the payments made by the federal government were taken into consideration by the court in determining the amount of support to be paid. Any payments shall be credited in the order set forth in Section 695.221 of the Code of Civil Procedure.

(c) If the custodial parent or other child support obligee refuses to apply for those benefits or fails to cooperate with the appropriate federal agency in completing the application but the child or children otherwise are eligible to receive those benefits, the noncustodial parent shall be credited toward the amount ordered by the court to be paid for that month by the noncustodial parent for support of the child or children in the amount of payment that the child or children would have received that month had the custodial parent or other child support obligee completed an application for the benefits if the noncustodial parent provides evidence to the local child support agency indicating the amount the child or children would have received. The credit for those payments shall continue until the child or children would no longer be eligible for those benefits or the order for child support for the child or children is no longer in effect, whichever occurs first.

SEC. 5. Section 17402 of the Family Code is amended to read:

17402. (a) In any case of separation or desertion of a parent or parents from a child or children that results in aid under Chapter 2 (commencing with Section 11200) of Part 3 of Division 9 of the Welfare and Institutions Code being granted to that family, the noncustodial parent or parents shall be obligated to the county for an amount equal to the amount specified in an order for the support and maintenance of the family issued by a court of competent jurisdiction.

(b) The local child support agency shall take appropriate action pursuant to this section as provided in subdivision (*l*) of Section 17400. The local child support agency may establish liability for child support as provided in subdivision (a) when public assistance was provided by another county or by other counties.

(c) The amount of the obligation established for each parent with a liability under subdivision (a) shall be determined by using the appropriate child support guideline currently in effect and shall be computed as follows:

(1) If one parent remains as a custodial parent, the support shall be computed according to the guideline.

(2) If the parents reside together and neither father nor mother remains as a custodial parent, the guideline support shall be computed by combining the noncustodial parents' incomes. The combined incomes shall be used as the high earner's net monthly disposable income in the guideline formula. Income shall not be attributed to the caretaker or governmental agency. The amount of guideline support resulting shall be proportionately shared between the noncustodial parents based upon their net monthly disposable incomes.

(3) If the parents reside apart and neither father nor mother remains as a custodial parent, the guideline support shall be computed separately

for each parent by treating each parent as a noncustodial parent. Income shall not be attributed to the caretaker or government agency.

(d) A parent shall pay the amount of support specified in the support order to the local child support agency.

CHAPTER 306

An act to amend Section 8700 of the Family Code, relating to adoption.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 8700 of the Family Code is amended to read:

8700. (a) Either birth parent may relinquish a child to the department or a licensed adoption agency for adoption by a written statement signed before two subscribing witnesses and acknowledged before an authorized official of the department or agency. The relinquishment, when reciting that the person making it is entitled to the sole custody of the child and acknowledged before the officer, is prima facie evidence of the right of the person making it to the sole custody of the child and the person's sole right to relinquish.

(b) A relinquishing parent who is a minor has the right to relinquish his or her child for adoption to the department or a licensed adoption agency, and the relinquishment is not subject to revocation by reason of the minority.

(c) If a relinquishing parent resides outside this state and the child is being cared for and is or will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent before a notary on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(d) If a relinquishing parent and child reside outside this state and the child will be cared for and will be placed for adoption by the department or a licensed adoption agency, the relinquishing parent may relinquish the child to the department or agency by a written statement signed by the relinquishing parent, after that parent has satisfied the following requirements:

(1) Prior to signing the relinquishment, the relinquishing parent shall have received, from a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence, the same counseling and advisement services as if the relinquishing parent resided in this state.

(2) The relinquishment shall be signed before a representative of an agency licensed or otherwise approved to provide adoption services under the laws of the relinquishing parent's state of residence whenever possible or before a licensed social worker on a form prescribed by the department, and previously signed by an authorized official of the department or agency, that signifies the willingness of the department or agency to accept the relinquishment.

(e) The relinquishment authorized by this section has no effect until a certified copy is sent to, and filed with, the department. The licensed adoption agency shall send that copy by certified mail, return receipt requested, or by overnight courier or messenger, with proof of delivery, to the department no earlier than the end of the business day following the signing thereof. The relinquishment shall be final within 10 business days after receipt of the filing by the department, unless a longer period of time is necessary due to a pending court action or some other cause beyond the control of the department. After the relinquishment is filed and final, it may be rescinded only by the mutual consent of the department or licensed adoption agency to which the child was relinquished and the birth parent or parents relinquishing the child.

(f) The relinquishing parent may name in the relinquishment the person or persons with whom he or she intends that placement of the child for adoption be made by the department or licensed adoption agency.

(g) Notwithstanding subdivision (e), if the relinquishment names the person or persons with whom placement by the department or licensed adoption agency is intended and the child is not placed in the home of the named person or persons or the child is removed from the home prior to the granting of the adoption, the department or agency shall mail a notice by certified mail, return receipt requested, to the birth parent signing the relinquishment within 72 hours of the decision not to place the child for adoption or the decision to remove the child from the home.

(h) The relinquishing parent has 30 days from the date on which the notice described in subdivision (g) was mailed to rescind the relinquishment.

(1) If the relinquishing parent requests rescission during the 30-day period, the department or licensed adoption agency shall rescind the relinquishment.

(2) If the relinquishing parent does not request rescission during the 30-day period, the department or licensed adoption agency shall select adoptive parents for the child.

(3) If the relinquishing parent and the department or licensed adoption agency wish to identify a different person or persons during the 30-day period with whom the child is intended to be placed, the initial relinquishment shall be rescinded and a new relinquishment identifying the person or persons completed.

(i) If the parent has relinquished a child, who has been found to come within Section 300 of the Welfare and Institutions Code or is the subject of a petition for jurisdiction of the juvenile court under Section 300 of the Welfare and Institutions Code, to the department or a licensed adoption agency for the purpose of adoption, the department or agency accepting the relinquishment shall provide written notice of the relinquishment within five court days to all of the following:

(1) The juvenile court having jurisdiction of the child.

(2) The child's attorney, if any.

(3) The relinquishing parent's attorney, if any.

(j) The filing of the relinquishment with the department terminates all parental rights and responsibilities with regard to the child, except as provided in subdivisions (g) and (h).

(k) The department shall adopt regulations to administer the provisions of this section.

SEC. 2. It is the Legislature's intent, in enacting this act, to ensure that the process for the relinquishment for adoption of a child to the State Department of Social Services or a licensed adoption agency is expedited to the greatest extent possible while also ensuring that the interests of all parties are considered, especially the interests of the child.

CHAPTER 307

An act to amend Sections 7100 and 7105 of the Health and Safety Code, relating to human remains.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 7100 of the Health and Safety Code is amended to read:

7100. (a) The right to control the disposition of the remains of a deceased person, the location and conditions of interment, and

arrangements for funeral goods and services to be provided, unless other directions have been given by the decedent pursuant to Section 7100.1, vests in, and the duty of disposition and the liability for the reasonable cost of disposition of the remains devolves upon, the following in the order named:

(1) An agent under a power of attorney for health care who has the right and duty of disposition under Division 4.7 (commencing with Section 4600) of the Probate Code, except that the agent is liable for the costs of disposition only in either of the following cases:

(A) Where the agent makes a specific agreement to pay the costs of disposition.

(B) Where, in the absence of a specific agreement, the agent makes decisions concerning disposition that incur costs, in which case the agent is liable only for the reasonable costs incurred as a result of the agent's decisions, to the extent that the decedent's estate or other appropriate fund is insufficient.

(2) The competent surviving spouse.

(3) The sole surviving competent adult child of the decedent, or if there is more than one competent adult child of the decedent, the majority of the surviving competent adult children. However, less than the majority of the surviving competent adult children shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult children of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult children.

(4) The surviving competent parent or parents of the decedent. If one of the surviving competent parents is absent, the remaining competent parent shall be vested with the rights and duties of this section after reasonable efforts have been unsuccessful in locating the absent surviving competent parent.

(5) The sole surviving competent adult sibling of the decedent, or if there is more than one surviving competent adult sibling of the decedent, the majority of the surviving competent adult siblings. However, less than the majority of the surviving competent adult siblings shall be vested with the rights and duties of this section if they have used reasonable efforts to notify all other surviving competent adult siblings of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult siblings.

(6) The surviving competent adult person or persons respectively in the next degrees of kinship, or if there is more than one surviving competent adult person of the same degree of kinship, the majority of those persons. Less than the majority of surviving competent adult persons of the same degree of kinship shall be vested with the rights and duties of this section if those persons have used reasonable efforts to

notify all other surviving competent adult persons of the same degree of kinship of their instructions and are not aware of any opposition to those instructions by the majority of all surviving competent adult persons of the same degree of kinship.

(7) The public administrator when the deceased has sufficient assets.

(b) (1) If any person to whom the right of control has vested pursuant to subdivision (a) has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death and those charges are known to the funeral director or cemetery authority, the right of control is relinquished and passed on to the next of kin in accordance with subdivision (a).

(2) If the charges against the person are dropped, or if the person is acquitted of the charges, the right of control is returned to the person.

(3) Notwithstanding this subdivision, no person who has been charged with first or second degree murder or voluntary manslaughter in connection with the decedent's death to whom the right of control has not been returned pursuant to paragraph (2) shall have any right to control disposition pursuant to subdivision (a) which shall be applied, to the extent the funeral director or cemetery authority know about the charges, as if that person did not exist.

(c) A funeral director or cemetery authority shall have complete authority to control the disposition of the remains, and to proceed under this chapter to recover usual and customary charges for the disposition, when both of the following apply:

(1) Either of the following applies:

(A) The funeral director or cemetery authority has knowledge that none of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) exists.

(B) None of the persons described in paragraphs (1) to (6), inclusive, of subdivision (a) can be found after reasonable inquiry, or contacted by reasonable means.

(2) The public administrator fails to assume responsibility for disposition of the remains within seven days after having been given written notice of the facts. Written notice may be delivered by hand, U.S. mail, facsimile transmission, or telegraph.

(d) The liability for the reasonable cost of final disposition devolves jointly and severally upon all kin of the decedent in the same degree of kinship and upon the estate of the decedent. However, if a person accepts the gift of an entire body under subdivision (a) of Section 7155.5, that person, subject to the terms of the gift, shall be liable for the reasonable cost of final disposition of the decedent.

(e) This section shall be administered and construed to the end that the expressed instructions of the decedent or the person entitled to control the disposition shall be faithfully and promptly performed.

(f) A funeral director or cemetery authority shall not be liable to any person or persons for carrying out the instructions of the decedent or the person entitled to control the disposition.

(g) For purposes of this section, ''adult'' means an individual who has attained 18 years of age, ''child'' means a natural or adopted child of the decedent, and ''competent'' means an individual who has not been declared incompetent by a court of law or who has been declared competent by a court of law following a declaration of incompetence.

SEC. 2. Section 7105 of the Health and Safety Code is amended to read:

7105. (a) If the person or persons listed in paragraphs (1), (3), (4), (5), and (6) of subdivision (a) of Section 7100 that would otherwise have the right to control the disposition and arrange for funeral goods and services fails to act, or fails to delegate his or her authority to act to some other person within seven days of the death, or in the case of a person listed in paragraph (2) of subdivision (a) of Section 7100, within 10 days of the death, the right to control the disposition and arrange for funeral goods and services shall be relinquished and passed on to the person or persons of the next degree of kinship in accordance with subdivision (a) of Section 7100.

(b) If the person or persons listed in paragraphs (1), (3), (4), (5), and (6) of subdivision (a) of Section 7100 that would otherwise have the right to control the disposition and arrange for funeral goods and services cannot be found within seven days of the death, or in the case of a person listed in paragraph (2) of subdivision (a) of Section 7100, within 10 days of the death, after reasonable inquiry, the right to control the disposition and arrange for funeral goods and services shall be relinquished and passed on to the person or persons of the next degree of kinship in accordance with subdivision (a) of Section 7100.

(c) If any persons listed in paragraphs (1) to (6), inclusive, of subdivision (a) of Section 7100 that would otherwise have equal rights to control the disposition and arrange for funeral goods and services fail to agree on disposition and funeral goods and services to be provided within seven days of the date on which the right and duty of disposition devolved upon the persons, a funeral establishment or a cemetery authority having possession of the remains, or any person who has equal right to control the disposition of the remains may file a petition in the superior court in the county in which the decedent resided at the time of his or her death, or in which the remains are located, naming as a party to the action those persons who would otherwise have equal rights to control the disposition and seeking an order of the court determining, as appropriate, who among those parties will have the control of disposition and to direct that person to make interment of the remains. The court, at the time of determining the person to whom the right of

disposition will vest, shall, from the remaining parties to the action, establish an alternate order to whom the right to control disposition will pass if the person vested with the right to control disposition fails to act within seven days.

(d) If the person vested with the duty of interment has criminal charges pending against him or her for the unlawful killing of the decedent, in violation of Section 187 of, or subdivision (a) or (b) of Section 192 of, the Penal Code, the person or persons with the next highest priority prescribed by Section 7100 may petition a court of competent jurisdiction for an order for control of the disposition of the decedent's remains. For this purpose, it shall be conclusively presumed that the petitioner is the person entitled to control the disposition of the remains if the petitioner is next in the order of priority specified in Section 7100.

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 308

An act to amend Sections 8875.8 and 8875.9 of the Government Code, relating to seismic safety.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 8875.8 of the Government Code is amended to read:

8875.8. (a) An owner who has received actual or constructive notice that a building located in seismic zone 4 is constructed of unreinforced masonry shall post in a conspicuous place at the entrance of the building, on a sign not less than 5″ × 7″ the following statement, printed in not less than 30-point bold type:

''This is an unreinforced masonry building. Unreinforced masonry buildings may be unsafe in the event of a major earthquake.''

(b) Notwithstanding subdivision (a), unless the owner of a building subject to subdivision (a) is in compliance with that subdivision on and after December 31, 2004, an owner who has received actual or constructive notice that a building located in seismic zone 4 is constructed of unreinforced masonry and has not been retrofitted in accordance with an adopted hazardous building ordinance or mitigation program shall post in a conspicuous place at the entrance of the building, on a sign not less than 8″ × 10″ the following statement, with the first two words printed in not less than 50-point bold type and the remainder in at least 30-point type:

''Earthquake Warning. This is an unreinforced masonry building. You may not be safe inside or near unreinforced masonry buildings during an earthquake.''

(c) Notice of the obligation to post a sign, as required by subdivisions (a) and (b), shall be included in the Commercial Property Owner's Guide to Earthquake Safety.

SEC. 2. Section 8875.9 of the Government Code is amended to read:

8875.9. Section 8875.8 shall not apply to either one of the following:

(a) Unreinforced masonry construction if the walls are nonload bearing with steel or concrete frame.

(b) A building that has been retrofitted in accordance with an adopted hazardous buildings ordinance or mitigation program, in which case the local jurisdiction may authorize the owner to post in a conspicuous place at the entrance of the building, on a sign not less than 5″ × 7″ the following statement, printed in not less than 30-point bold type:

''This building has been improved in accordance with the seismic safety standards of a local building ordinance that is applicable to unreinforced masonry buildings.''

CHAPTER 309

An act to amend Section 66801 of the Education Code, relating to community college attendance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 66801 of the Education Code is amended to read:

66801. (a) The Board of Governors of the California Community Colleges is authorized to enter into an interstate attendance agreement with any statewide public agency of another state that is responsible for public institutions of postsecondary education providing the first two years of college instruction and that is an agency of a state that is a party to the Western Interstate Compact for Higher Education, for the exchange of residents, on a one-for-one basis, for the purposes of instruction.

(b) (1) As an alternative to the procedure established in subdivision (a), the board of governors may authorize the governing board of a community college district to enter into an interstate attendance agreement directly with the governing body of a public institution of postsecondary education providing the first two years of college instruction if the state in which the public institution is situated borders California, is a party to the Western Interstate Compact for Higher Education and the state is not represented by a statewide public agency that is responsible for public institutions of postsecondary education providing the first two years of college instruction.

(2) Each agreement entered into under this subdivision shall satisfy the requirements of subdivision (a), and shall become effective once fully executed and approved by the governing board of each participating district. There shall be no need to file a resolution as described in Section 66802 or for any further action by the board of governors. An interstate attendance agreement entered into under this subdivision may be effective on or after July 1, 2003.

(c) The agreement shall contain terms as the board of governors may adopt and that are consistent with the authority and responsibility of California community college districts and the community colleges they maintain. In no event shall an agreement permit or require the entry of California residents into institutions in another state on terms substantially different from those governing the admission of residents of the other state to California community colleges. These agreements shall contain the provision that no additional state funds shall be required to carry out the provisions of this chapter.

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 allow the Board of Governors of the California Community Colleges to enter into interstate attendance agreements for the 2004–05 school year, it is necessary that this act take effect immediately.

CHAPTER 310

An act to add Section 6534 to the Government Code, relating to health care.

[Approved by Governor August 24, 2004. Filed with Secretary of State August 25, 2004.]

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 prison inmate health care delivery system is in a state of disarray.

(b) Health care districts operate 32 rural public hospitals in California. Many of these hospitals are located within 10 miles of a state prison facility, and are able to provide all necessary health care services for the majority of prison inmates.

(c) California prison administrators frequently bypass health care district hospitals when seeking care for inmates, in favor of more distant and preferred hospitals.

(d) Health care districts operate public hospitals that provide more than 50 percent of all hospital care in rural California.

(e) California's rural district hospitals have struggled for financial survival for more than the past 10 years, posting net operating losses of more than $22,000,000 in 2002 according to the Office of Statewide Health Planning and Development.

(f) More extensive utilization of the rural public hospitals operated by health care districts for delivery of inmate health services leverages state inmate health care dollars to maximum effect ensuring the long-term survival of the state's rural health safety net while helping to reduce state General Fund expenditures for inmate health care.

(g) Health care district management expertise could significantly improve prison health facility management, health care utilization review, quality of health care review, and health care staff recruitment. This assistance would assist Department of Corrections staff in improving health care quality, access, and cost containment.

(h) More effective utilization of health care district hospitals could reduce the cost of outsourced inmate care by at least $20,000,000 annually, improve the quality of inmate health care, and improve the overall management of California's prison health care system.

(i) It is in the best interests of California's prison inmates, the State of California, and California's rural health safety net, that the Department of Corrections and health care districts form regional joint powers agencies to provide, arrange for, and assist in the provision of health care services to California prison inmates.

SEC. 2. Section 6534 is added to the Government Code, to read:

6534. (a) This section shall be known, and may be cited, as the California Prison Inmate Health Service Reform Act.

(b) The Department of Corrections may enter into joint powers agreements under this chapter with one or more health care districts established in accordance with Division 23 (commencing with Section 32000) of the Health and Safety Code, in order to establish regional inmate health service joint powers agencies.

(c) Inmate health service joint powers authorities may be utilized for any purpose related to the provision, acquisition, or coordination of inmate health care services, including, but not limited to, all of the following:

(1) The provision of district hospital-based surgical, diagnostic, emergency, trauma, acute care, skilled nursing, long-term, and inpatient psychiatric care.

(2) Health care utilization review services.

(3) Health facility management consultation services.

(4) Health care contract design, negotiation, management, and related consultation services.

(5) Health care quality monitoring, management, and oversight consulting services.

(6) Physician and health care staff recruitment services.

(7) The design, construction, and operation of dedicated, secure, community-based health care facilities for the provision of inmate health care services.

CHAPTER 311

An act to add Section 2051.5 to the Insurance Code, relating to fire insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 25, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 2051.5 is added to the Insurance Code, to read:

2051.5. (a) Under an open policy that requires payment of the replacement cost for a loss, the measure of indemnity is the amount that it would cost the insured to repair, rebuild, or replace the thing lost or injured, without a deduction for physical depreciation, or the policy limit, whichever is less.

If the policy requires the insured to repair, rebuild, or replace the damaged property in order to collect the full replacement cost, the insurer shall pay the actual cash value of the damaged property, as defined in Section 2051, until the damaged property is repaired, rebuilt, or replaced. Once the property is repaired, rebuilt, or replaced, the insurer shall pay the difference between the actual cash value payment made and the full replacement cost reasonably paid to replace the damaged property, up to the limits stated in the policy.

(b) No time limit of less than 12 months from the date that the first payment toward the actual cash value is made shall be placed upon an insured in order to collect the full replacement cost of the loss, subject to the policy limit. Additional extensions of six months shall be provided to policyholders for good cause. In the event of a loss relating to a ''state of emergency,'' as defined in Section 8558 of the Government Code, no time limit of less than 24 months from the date that the first payment toward the actual cash value is made shall be placed upon the insured in order to collect the full replacement cost of the loss, subject to the policy limit. Nothing in this section shall prohibit the insurer from allowing the insured additional time to collect the full replacement cost.

(c) In the event of a total loss of the insured structure, no policy issued or delivered in this state may contain a provision that limits or denies payment of the replacement cost in the event the insured decides to rebuild or replace the property at a location other than the insured premises. However, the measure of indemnity shall be based upon the replacement cost of the insured property and shall not be based upon the cost to repair, rebuild, or replace at a location other than the insured premises.

(d) Nothing in this section shall prohibit an insurer from restricting payment in cases of suspected fraud.

(e) The changes made to this section by the act that added this subdivision shall be implemented by an insurer on and after the effective date of that act, except that an insurer shall not be required to modify policy forms to be consistent with those changes until July 1, 2005. On and after July 1, 2005, all policy forms used by an insurer shall reflect those changes.

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

In order to protect consumers of insurance who suffer the loss of their homes or other structures, it is necessary that this act take effect immediately.

CHAPTER 312

An act to amend Section 23057 of the Financial Code, relating to deferred deposit transactions.

[Approved by Governor August 25, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 23057 of the Financial Code is amended to read:

23057. On December 1, 2007, the commissioner shall report to the Governor and the Legislature on its implementation of this division. The report shall include, at a minimum, information regarding the demand for deferred deposit transactions, the growth and trends in the industry, common practices for conducting the business of deferred deposit transactions, the advertising practices of the industry, including any violations of Section 23027, and any other information the commissioner deems necessary to inform the Governor and the Legislature regarding potential legislation that may be necessary to protect the people of the State of California. The commissioner's recommendations for future action may include, but are not limited to, changes in the fees charged to consumers, specifications regarding the length of time for deferred deposit transactions, maximum amount provided to consumers, additional regulation of advertising practices, and the implementation of an installment loan product in lieu of a deferred deposit transaction as described in this division.

As the commissioner conducts this study, licensees shall be required to supply all information the commissioner deems necessary. The study shall be made public and may not include any proprietary information.

CHAPTER 313

An act to amend Sections 17557, 17558, 17558.5, and 17561 of, and to add Section 17572 to, the Government Code, relating to state mandates.

[Approved by Governor August 25, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 17557 of the Government Code is amended to read:

17557. (a) If the commission determines there are costs mandated by the state pursuant to Section 17555, it shall determine the amount to be subvened to local agencies and school districts for reimbursement. In so doing it shall adopt parameters and guidelines for reimbursement of any claims relating to the statute or executive order. The successful test claimants shall submit proposed parameters and guidelines within 30 days of adoption of a statement of decision on a test claim. At the request of a successful test claimant, the commission may provide for one or more extensions of this 30-day period at any time prior to its adoption of the parameters and guidelines. If proposed parameters and guidelines are not submitted within the 30-day period and the commission has not granted an extension, then the commission shall notify the test claimant that the amount of reimbursement the test claimant is entitled to for the first 12 months of incurred costs will be reduced by 20 percent, unless the test claimant can demonstrate to the commission why an extension of the 30-day period is justified.

(b) In adopting parameters and guidelines, the commission may adopt an allocation formula or uniform allowance that would provide for reimbursement of each local agency or school district of a specified amount each year.

(c) The parameters and guidelines adopted by the commission shall specify the fiscal years for which local agencies and school districts shall be reimbursed for costs incurred. However, the commission may not specify in the parameters and guidelines any fiscal year for which payment could be provided in the annual Budget Act.

(d) A local agency, school district, or the state may file a written request with the commission to amend, modify, or supplement the parameters or guidelines. The commission may, after public notice and hearing, amend, modify, or supplement the parameters and guidelines. A parameters and guidelines amendment submitted within 90 days of the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, shall apply to all years eligible for reimbursement as defined in the original parameters and guidelines. A parameters and guidelines amendment filed more than 90 days after the claiming deadline for initial claims, as specified in the claiming instructions pursuant to Section 17561, and on or before January 15 following a fiscal year, shall establish reimbursement eligibility for that fiscal year.

(e) A test claim shall be submitted on or before June 30 following a fiscal year in order to establish eligibility for reimbursement for that

fiscal year. The claimant may thereafter amend the test claim at any time prior to a commission hearing on the claim without affecting the original filing date if the amendment substantially relates to the original test claim.

SEC. 2. Section 17558 of the Government Code is amended to read:

17558. (a) The commission shall submit the adopted parameters and guidelines to the Controller. All claims relating to a statute or executive order that are filed after the adoption or amendment of parameters and guidelines pursuant to Section 17557 shall be transferred to the Controller who shall pay and audit the claims from funds made available for that purpose.

(b) Not later than 60 days after receiving the adopted parameters and guidelines from the commission, the Controller shall issue claiming instructions for each mandate that requires state reimbursement, to assist local agencies and school districts in claiming costs to be reimbursed. In preparing claiming instructions, the Controller may request the assistance of other state agencies. The claiming instructions shall be derived from the test claim decision and the parameters and guidelines adopted by the commission.

(c) The Controller shall, within 60 days after receiving revised adopted parameters and guidelines from the commission or other information necessitating a revision of the claiming instructions, prepare and issue revised claiming instructions for mandates that require state reimbursement that have been established by commission action pursuant to Section 17555 or after any decision or order of the commission pursuant to Section 17551. In preparing revised claiming instructions, the Controller may request the assistance of other state agencies.

SEC. 3. Section 17558.5 of the Government Code is amended to read:

17558.5. (a) A reimbursement claim for actual costs filed by a local agency or school district pursuant to this chapter is subject to the initiation of an audit by the Controller no later than three years after the date that the actual reimbursement claim is filed or last amended, whichever is later. However, if no funds are appropriated or no payment is made to a claimant for the program for the fiscal year for which the claim is filed, the time for the Controller to initiate an audit shall commence to run from the date of initial payment of the claim. In any case, an audit shall be completed no later than two years after the date that the audit is commenced.

(b) The Controller may conduct a field review of any claim after the claim has been submitted, prior to the reimbursement of the claim.

(c) The Controller shall notify the claimant in writing within 30 days after issuance of a remittance advice of any adjustment to a claim for

reimbursement that results from an audit or review. The notification shall specify the claim components adjusted, the amounts adjusted, interest charges on claims adjusted to reduce the overall reimbursement to the local agency or school district, and the reason for the adjustment. Remittance advices and other notices of payment action shall not constitute notice of adjustment from an audit or review.

(d) The interest rate charged by the Controller on reduced claims shall be set at the Pooled Money Investment Account rate and shall be imposed on the dollar amount of the overpaid claim from the time the claim was paid until overpayment is satisfied.

(e) Nothing in this section shall be construed to limit the adjustment of payments when inaccuracies are determined to be the result of the intent to defraud, or when a delay in the completion of an audit is the result of willful acts by the claimant or inability to reach agreement on terms of final settlement.

SEC. 4. Section 17561 of the Government Code is amended to read:

17561. (a) The state shall reimburse each local agency and school district for all ''costs mandated by the state,'' as defined in Section 17514.

(b) (1) For the initial fiscal year during which these costs are incurred, reimbursement funds shall be provided as follows:

(A) Any statute mandating these costs shall provide an appropriation therefor.

(B) Any executive order mandating these costs shall be accompanied by a bill appropriating the funds therefor, or alternatively, an appropriation for these costs shall be included in the Budget Bill for the next succeeding fiscal year. The executive order shall cite that item of appropriation in the Budget Bill or that appropriation in any other bill that is intended to serve as the source from which the Controller may pay the claims of local agencies and school districts.

(2) In subsequent fiscal years appropriations for these costs shall be included in the annual Governor's Budget and in the accompanying Budget Bill. In addition, appropriations to reimburse local agencies and school districts for continuing costs resulting from chaptered bills or executive orders for which claims have been awarded pursuant to subdivision (a) of Section 17551 shall be included in the annual Governor's Budget and in the accompanying Budget Bill subsequent to the enactment of the local government claims bill pursuant to Section 17600 that includes the amounts awarded relating to these chaptered bills or executive orders.

(c) The amount appropriated to reimburse local agencies and school districts for costs mandated by the state shall be appropriated to the Controller for disbursement.

(d) The Controller shall pay any eligible claim pursuant to this section within 60 days after the filing deadline for claims for reimbursement or 15 days after the date the appropriation for the claim is effective, whichever is later. The Controller shall disburse reimbursement funds to local agencies or school districts if the costs of these mandates are not payable to state agencies, or to state agencies that would otherwise collect the costs of these mandates from local agencies or school districts in the form of fees, premiums, or payments. When disbursing reimbursement funds to local agencies or school districts, the Controller shall disburse them as follows:

(1) For initial reimbursement claims, the Controller shall issue claiming instructions to the relevant local agencies and school districts pursuant to Section 17558. Issuance of the claiming instructions shall constitute a notice of the right of the local agencies and school districts to file reimbursement claims, based upon parameters and guidelines adopted by the commission.

(A) When claiming instructions are issued by the Controller pursuant to Section 17558 for each mandate determined pursuant to Section 17555 that requires state reimbursement, each local agency or school district to which the mandate is applicable shall submit claims for initial fiscal year costs to the Controller within 120 days of the issuance date for the claiming instructions.

(B) When the commission is requested to review the claiming instructions pursuant to Section 17571, each local agency or school district to which the mandate is applicable shall submit a claim for reimbursement within 120 days after the commission reviews the claiming instructions for reimbursement issued by the Controller.

(C) If the local agency or school district does not submit a claim for reimbursement within the 120-day period, or submits a claim pursuant to revised claiming instructions, it may submit its claim for reimbursement as specified in Section 17560. The Controller shall pay these claims from the funds appropriated therefor, provided that the Controller (i) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, and (ii) may reduce any claim that the Controller determines is excessive or unreasonable.

(2) In subsequent fiscal years each local agency or school district shall submit its claims as specified in Section 17560. The Controller shall pay these claims from funds appropriated therefor, provided that the Controller (A) may audit the records of any local agency or school district to verify the actual amount of the mandated costs, (B) may reduce any claim that the Controller determines is excessive or unreasonable, and (C) shall adjust the payment to correct for any underpayments or overpayments which occurred in previous fiscal years.

(3) When paying a timely filed claim for initial reimbursement, the Controller shall withhold 20 percent of the amount of the claim until the claim is audited to verify the actual amount of the mandated costs. All initial reimbursement claims for all fiscal years required to be filed on their initial filing date for a state-mandated local program shall be considered as one claim for the purpose of computing any late claim penalty. Any claim for initial reimbursement filed after the filing deadline shall be reduced by 10 percent of the amount that would have been allowed had the claim been timely filed. The Controller may withhold payment of any late claim for initial reimbursement until the next deadline for funded claims unless sufficient funds are available to pay the claim after all timely filed claims have been paid. In no case may a reimbursement claim be paid if submitted more than one year after the filing deadline specified in the Controller's claiming instructions on funded mandates contained in a claims bill.

SEC. 5. Section 17572 is added to the Government Code, to read:

17572. (a) The commission shall amend the parameters and guidelines for the state-mandated local program contained in Chapter 752 of the Statutes of 1998, known as the Animal Adoption mandate (Case No. 98-TC-11), as specified below:

(1) Amend the formula for determining the reimbursable portion of acquiring or building additional shelter space that is larger than needed to comply with the increased holding period to specify that costs incurred to address preexisting shelter overcrowding or animal population growth are not reimbursable.

(2) Clarify how the costs for care and maintenance shall be calculated.

(3) Detail the documentation necessary to support reimbursement claims under this mandate, in consultation with the Bureau of State Audits and the Controller's office.

(b) The parameters and guidelines, as amended pursuant to this section, shall apply to claims for costs incurred in fiscal years commencing with the 2005–06 fiscal year in which Chapter 752 of the Statutes of 1998 is not suspended pursuant to Section 17581.

(c) Before funds are appropriated to reimburse local agencies for claims related to costs incurred in fiscal years commencing with the 2005–06 fiscal year pursuant to Sections 1834 and 1846 of the Civil Code, and Sections 31108, 31752, 31752.5, 31753, 32001, and 32003 of the Food and Agricultural Code, known as the Animal Adoption mandate, local agencies shall file reimbursement claims pursuant to the parameters and guidelines amended pursuant to this section, and the Controller's revised claiming instructions.

CHAPTER 314

An act to amend Sections 112685, 112845, and 112850 of the Health and Safety Code, relating to canneries.

[Approved by Governor August 25, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 112685 of the Health and Safety Code is amended to read:

112685. There is in the state government a Cannery Inspection Board consisting of the following six members:

(a) The director of the state department, who shall act as chairperson.

(b) One person appointed by the director who shall have had at the time of his or her appointment at least 10 years experience in or with canning technology and has a degree in chemistry, bacteriology, or medicine.

(c) Four persons appointed by the director who are experienced, have substantial investments, and are actively engaged in the canning industry at the time of their appointment.

One of the four appointive members shall be engaged in the canning of animal food.

SEC. 2. Section 112845 of the Health and Safety Code is amended to read:

112845. The Cannery Inspection Fund is hereby established as a special fund in the State Treasury. All money received by the department under this chapter shall be deposited in the fund and expended by the department, upon appropriation by the Legislature, for the purpose of carrying out and implementing this chapter.

SEC. 3. Section 112850 of the Health and Safety Code is amended to read:

112850. Notwithstanding Section 112845, the department and the Department of Finance may authorize the deposit in the Special Deposit Fund of cash deposits received by the department under Section 112765; and in that event, upon the determination by the department that all or a part of any deposit is due the state for payment on account of the depositor's pro rata share of costs incurred by the state under this chapter, the amount so determined shall, on order of the Controller, be transferred from the Special Deposit Fund to the Cannery Inspection Fund.

All money deposited in the Special Deposit Fund under this section shall be subject to Article 2 (commencing with Section 16370) of Chapter 2 of Part 2 of Division 4 of Title 2 of the Government Code.

CHAPTER 315

An act to amend Section 17605 of the Welfare and Institutions Code, relating to social services.

[Approved by Governor August 25, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 17605 of the Welfare and Institutions Code is amended to read:

17605. (a) For the 1992–93 fiscal year, the Controller shall deposit into the Caseload Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, from revenues deposited into the Sales Tax Growth Account, an amount to be determined by the Department of Finance, that represents the sum of the shortfalls between the actual realignment revenues received by each county and each city and county from the Social Services Subaccount of the Local Revenue Fund in the 1991–92 fiscal year and the net costs incurred by each of those counties and cities and counties in the fiscal year for the programs described in Sections 10101, 10101.1, 11322, 11322.2, and 12306, subdivisions (a), (b), (c), and (d) of Section 15200, and Sections 15204.2 and 18906.5. The Department of Finance shall provide the Controller with an allocation schedule on or before August 15, 1993, that shall be used by the Controller to allocate funds deposited to the Caseload Subaccount under this subdivision. The Controller shall allocate these funds no later than August 27, 1993.

(b) (1) (A) For the 1993–94 fiscal year and fiscal years thereafter, the Controller shall deposit into the Caseload Subaccount of the Sales Tax Growth Account of the Local Revenue Fund, from revenues deposited into the Sales Tax Growth Account, an amount determined by the Department of Finance, in consultation with the appropriate state departments and the California State Association of Counties, that is sufficient to fund the net cost for the realigned portion of the county or city and county share of growth in social services caseloads, as specified in paragraph (2), and any share of growth from the previous year or years for which sufficient revenues were not available in the Caseload Subaccount. The Department of Finance shall provide the Controller

with an allocations schedule on or before March 15 of each year. The schedule shall be used by the Controller to allocate funds deposited into the Caseload Subaccount under this subdivision.

(B) It is the intent of the Legislature that counties shall receive allocations from the Caseload Subaccount as soon as possible after funds are received in the Sales Tax Growth Account. The Department of Finance shall recommend to the Legislature, by January 10, 2005, a procedure to expedite the preparation and provision of the allocations schedule described in subparagraph (A) and the allocation of funds by the Controller.

(2) For purposes of this subdivision, "growth" means the increase in the actual caseload expenditures for the prior fiscal year over the actual caseload expenditures for the fiscal year preceding the prior fiscal year for the programs described in Section 12306, subdivisions (a), (b), (c), and (d) of Section 15200, and Sections 10101, 15204.2 and 18906.5 of this code, and for which funds are allocated pursuant to subdivision (b) of Section 123940 of the Health and Safety Code.

(3) The difference in caseload expenditures between the fiscal years shall be multiplied by the factors that represent the change in county or city and county shares of the realigned programs. These products shall then be added or subtracted, taking into account whether the county's or city and county's share of costs was increased or decreased as a result of realignment, to yield each county's or city and county's allocation for caseload growth. Allocations for counties or cities and counties with allocations of less than zero shall be set at zero.

(c) On or before the 27th day of each month, the Controller shall allocate, to the local health and welfare trust fund social services account, the amounts deposited and remaining unexpended and unreserved on the 15th day of the month in the Caseload Subaccount, pursuant to the schedules of allocations of caseload growth described in subdivision (b). If there are insufficient funds to fully satisfy all caseload growth obligations, each county's or city and county's allocation for each program specified in subdivision (d) shall be prorated.

(d) Prior to allocating funds pursuant to subdivision (b), to the extent that funds are available from funds deposited in the Caseload Subaccount in the Sales Tax Growth Account in the Local Revenue Fund, the Controller shall allocate moneys to counties or cities and counties to correct any inequity or inequities in the computation of the child welfare services portion of the schedule required by subdivision (a) of Section 17602.

(e) (1) For the 2003–04 fiscal year, no Sales Tax Growth Account funds shall be allocated pursuant to this chapter until the caseload portion of the base of each county's social services account in the county's health and welfare trust fund is funded to the level of the

2001–02 fiscal year. Funds to meet this requirement shall be allocated from the Sales Tax Account of the Local Revenue Fund. If sufficient funds are not available in the Sales Tax Account of the Local Revenue Fund to achieve that funding level in the 2003–04 fiscal year, this requirement shall be funded in each succeeding fiscal year in which there are sufficient funds in the Sales Tax Account of the Local Revenue Fund until the caseload base funding level for which each county would have otherwise been eligible in accordance with subdivision (e) of Section 17602 for that year.

(2) The caseload portion of each county's social services account base shall be determined by subtracting its noncaseload portion of the base, as determined by the Department of Finance in its annual calculation of General Growth Account allocations, from the total base of each county's social services account for the 2001–02 fiscal year.

CHAPTER 316

An act to amend Section 17581.5 of the Government Code, relating to local mandate reimbursement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 25, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 17581.5 of the Government Code is amended to read:

17581.5. (a) A school district may not be required to implement or give effect to the statutes, or portion thereof, identified in subdivision (b) during any fiscal year and for the period immediately following that fiscal year for which the Budget Act has not been enacted for the subsequent fiscal year if all of the following apply:

(1) The statute or portion thereof, has been determined by the Legislature, the commission, or any court to mandate a new program or higher level of service requiring reimbursement of school districts pursuant to Section 6 of Article XIII B of the California Constitution.

(2) The statute, or portion thereof, has been specifically identified by the Legislature in the Budget Act for the fiscal year as being one for which reimbursement is not provided for that fiscal year. For purposes of this paragraph, a mandate shall be considered to have been specifically identified by the Legislature only if it has been included within the schedule of reimbursable mandates shown in the Budget Act

and it is specifically identified in the language of a provision of the item providing the appropriation for mandate reimbursements.

(b) This section applies only to the following mandates:

(1) The School Bus Safety I (CSM-4433) and II (97-TC-22) mandates (Chapter 642 of the Statutes of 1992; Chapter 831 of the Statutes of 1994; and Chapter 739 of the Statutes of 1997).

(2) The School Crimes Reporting II mandate (97-TC-03; and Chapter 759 of the Statutes of 1992 and Chapter 410 of the Statutes of 1995).

(3) Investment reports (96-358-02; and Chapter 783 of the Statutes of 1995 and Chapters 156 and 749 of the Statutes of 1996).

(4) County treasury oversight committees (96-365-03; and Chapter 784 of the Statutes of 1995 and Chapter 156 of the Statutes of 1996).

SEC. 2. The Legislature hereby finds and declares that, notwithstanding a prior determination by the Board of Control, acting as the predecessor agency for the Commission on State Mandates, and pursuant to subdivision (d) of Section 17556 of the Government Code, the state-mandated local program imposed by Chapter 1131 of the Statutes of 1975 no longer constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because subdivision (e) of Section 2207 of the Public Resources Code, as added by Chapter 1097 of the Statutes of 1990, confers on local agencies subject to that mandate authority to levy fees sufficient to pay for the mandated program.

SEC. 3. Notwithstanding any other provision of law, by January 1, 2006, the Commission on State Mandates shall reconsider whether each of the following statutes constitutes a reimbursable mandate under Section 6 of Article XIII B of the California Constitution in light of federal statutes enacted and federal and state court decisions rendered since these statutes were enacted:

(a) Sex offenders: disclosure by law enforcement officers (97-TC-15; and Chapters 908 and 909 of the Statutes of 1996, Chapters 17, 80, 817, 818, 819, 820, 821, and 822 of the Statutes of 1997, and Chapters 485, 550, 927, 928, 929, and 930 of the Statutes of 1998).

(b) Extended commitment, Youth Authority (98-TC-13; and Chapter 267 of the Statutes of 1998).

(c) Brown Act Reforms (CSM-4469; and Chapters 1136, 1137, and 1138 of the Statutes of 1993, and Chapter 32 of the Statutes of 1994).

(d) Photographic Record of Evidence (No. 98-TC-07; and Chapter 875 of the Statutes of 1985, Chapter 734 of the Statutes of 1986, and Chapter 382 of the Statutes of 1990).

SEC. 4. The Legislature hereby finds and declares that the following statutes no longer constitute a reimbursable mandate under Section 6 of Article XIII B of the California Constitution because provisions containing the reimbursable mandate have been repealed:

(a) Democratic Party presidential delegates (CSM-4131; and Chapter 1603 of the Statutes of 1982 and Chapter 8 of the Statutes of 1988, which enacted statutes that were repealed by Chapter 920 of the Statutes of 1994).

(b) Short-Doyle case management, Short-Doyle audits, and residential care services (CSM-4238; and Chapter 815 of the Statutes of 1979, Chapter 1327 of the Statutes of 1984, and Chapter 1352 of the Statutes of 1985, which enacted statutes that were repealed by Chapter 89 of the Statutes of 1991).

SEC. 5. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make necessary statutory changes to fully implement the Budget Act of 2003 at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 317

An act to amend Section 1936 of the Civil Code, relating to vehicle rental agreements.

[Approved by Governor August 25, 2004. Filed with Secretary of State August 25, 2004.]

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

SECTION 1. Section 1936 of the Civil Code, as amended by Section 2 of Chapter 948 of the Statutes of 2002, is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) ''Rental company'' means any person or entity in the business of renting passenger vehicles to the public.

(2) ''Renter'' means any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) ''Authorized driver'' means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if they are engaged in business activity with the renter, are licensed drivers, and satisfy the rental company's minimum age requirement, and (D) any person expressly listed by the rental company on the renter's contract as an authorized driver.

(4) (A) ''Customer facility charge'' means a fee required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) The fee shall be used to finance, design, and construct consolidated airport car rental facilities.

(ii) The fee shall be used to finance, design, construct, and provide common use transportation systems that move passengers between airport terminals and those consolidated car rental facilities.

(B) The aggregate amount to be collected may not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary and Committees on Transportation. In the case of a transportation system, the audit shall also consider the reasonable costs of providing the transit system or busing network. At the Burbank Airport, and at all other airports, the fees designated as a Customer Facility Charge may not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) The authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(5) ''Damage waiver'' means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(6) ''Electronic surveillance technology'' means a technological method or system used to observe, monitor, or collect information, including telematics, Global Positioning System (GPS), wireless technology, or location-based technologies. ''Electronic surveillance technology'' does not include event data recorders (EDR), sensing and diagnostic modules (SDM), or other systems that are used either:

(A) For the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle.

(B) As part of the vehicle's airbag sensing and diagnostic system in order to capture safety systems-related data for retrieval after a crash has occurred or in the event that the collision sensors are activated to prepare the decisionmaking computer to make the determination to deploy or not to deploy the airbag.

(7) ''Estimated time for replacement'' means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as ''crash books.''

(8) ''Estimated time for repair'' means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(9) ''Membership program'' means a service offered by a rental company that permits customers to bypass the rental counter and go directly to the car previously reserved. A membership program shall meet all of the following requirements:

(A) The renter initiates enrollment by completing an application on which the renter can specify a preference for type of vehicle and acceptance or declination of optional services.

(B) The rental company fully discloses, prior to the enrollee's first rental as a participant in the program, all terms and conditions of the rental agreement as well as all required disclosures.

(C) The renter may terminate enrollment at any time.

(D) The rental company fully explains to the renter that designated preferences, as well as acceptance or declination of optional services, may be changed by the renter at any time for the next and future rentals.

(E) An employee designated to receive the form specified in subparagraph (C) of paragraph (1) of subdivision (r) is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(10) ''Passenger vehicle'' means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company

may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle. However, the renter shall have no liability for any damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge, which shall include the cost of appraisal and all other costs and expenses incident to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle may not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts which may not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts, which may not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) may not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). No administrative charge may be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle may not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company may not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and may not assert or collect any claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim may not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company may not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved

between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company may not recover from the renter or other authorized driver for any item described in subdivision (b) to the extent the rental company obtains recovery from any other person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of any other person.

(e) (1) Except as provided in subdivision (f), every damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for any damage, loss, loss of use, or any cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to any damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside of the United States.

(3) Any authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company that offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract, and, for renters who are enrolled in the rental company's membership program, in a sign which shall be posted in a location clearly visible to those renters as they enter the location where their reserved rental cars are parked or near the exit of the bus or other conveyance that transports the enrollee to a reserved car: (A) the nature of the renter's liability, e.g., liability for all collision damage regardless of cause, (B) the extent of the

renter's liability, e.g., liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides a damage waiver shall, orally disclose to all renters, except those who are participants in the rental company's membership program, that the damage waiver may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. The renter's receipt of the oral disclosure shall be demonstrated through the renter acknowledging receipt of the oral disclosure near that part of the contract where the renter indicates, by the renter's own initials, his or her acceptance or declination of the damage waiver. Adjacent to that same part, the contract shall also state that the damage waiver is optional.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions).

(A) When the above notice is printed in the rental contract or holder in which the contract is placed, the following shall be printed immediately following the notice:

''The cost of an optional damage waiver is $____ for every (day or week).''

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

''The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented.''

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver.

(1) For rental vehicles that the rental company designates as an ''economy car,'' ''subcompact car,'' ''compact car,'' or any other term having similar meaning when offered for rental, or any other vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate may not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that are also either vehicles of next year's model, or not older than the previous year's model, the rate may not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model year, the rate may not exceed nine dollars ($9).

(i) On or after January 1, 2003, the manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, ''Consumer Price Index'' means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company that disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for a damage waiver and a statement that a damage waiver is optional.

(k) (1) A rental company may not require the purchase of a damage waiver, optional insurance, or any other optional good or service.

(2) A rental company may not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase the damage waiver,

optional insurance, or any other optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase the damage waiver, optional insurance, or any other optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company may not seek to recover any portion of any claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing any debit or block to be placed on the renter's credit card account.

(2) A rental company may not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, or a special district.

(B) The fee is calculated on a per-contract basis.

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract.

(E) If the fee imposed by the airport is for both a consolidated rental car facility and a common-use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10), but the fee imposed on customers of off-airport rental car companies who are transported on the common-use transportation system is proportionate to the costs of the common-use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided the airport requires off-airport customers to use the common-use transportation system.

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, constructing, or operating the facility or services and may not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to airports whose fees are governed by Section 1936.5 of the Civil Code, Section 50474.1 of the Government Code, or Section 57.5 of the San Diego Unified Port District Act.

(2) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the

Revenue and Taxation Code, the fees collected pursuant to this section, or any other law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, are not subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company may not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or leasing the vehicle, such as, but not limited to, required fuel or airport surcharges other than customer facility charges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge, include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company may not charge any fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall clearly disclose in that advertisement or quotation the terms of any mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall clearly disclose the existence and amount of the customer facility charge. For the purposes of this subparagraph, advertisements include radio,

television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If any person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided they are provided with information about the existence and amount of the fee, to the extent not specifically prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company is not responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company may not charge the renter any amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company may not charge the renter any amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A rental company may not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

(1) (A) When the equipment is used by the rental company only for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:

(i) The renter or law enforcement has informed the rental company that the vehicle has been stolen, abandoned, or missing.

(ii) The rental vehicle has not been returned following one week after the contracted return date, or by one week following the end of an extension of that return date.

(iii) The rental company discovers the rental vehicle has been stolen or abandoned, and, if stolen, it shall report the vehicle stolen to law enforcement by filing a stolen vehicle report, unless law enforcement has already informed the rental company that the vehicle has been stolen, abandoned, or is missing.

(B) If electronic surveillance technology is activated pursuant to subparagraph (A) of paragraph (1), a rental company shall maintain a record, in either electronic or written form, of information relevant to the activation of such technology. That information shall include the rental agreement, including the return date, and the date and time the electronic surveillance technology was activated. The record shall also include, if relevant, a record of any written or other communication with the renter, including communications regarding extensions of the rental, police reports, or other written communication with law enforcement officials. The record shall be maintained for a period of at least 12 months from the time the record is created and shall be made available upon the renter's request. The rental company shall maintain and furnish any explanatory codes necessary to read the record. A rental company shall not be required to maintain a record if electronic surveillance technology is activated to recover a rental vehicle that is stolen or missing at a time other than during a rental period.

(2) In response to a specific request from law enforcement pursuant to a subpoena or search warrant.

(3) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with GPS based technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing a defect in the technology and the information may then be used only for that purpose.

(4) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with electronic surveillance technology that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology, except as necessary to lock or unlock the vehicle.

(5) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing, flat tire or fuel services, at the request of the renter, if the rental company does not use, access or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to provide the requested roadside assistance.

(6) Nothing in this subdivision prohibits a rental company from obtaining, accessing, or using information from electronic surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

(p) A rental company may not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

(q) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(r) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or, if the renter is not a resident of this state, in the jurisdiction in which the renter resides.

(s) Any waiver of any of the provisions of this section shall be void and unenforceable as contrary to public policy.

(t) (1) A rental company's disclosure requirements shall be satisfied for renters who are enrolled in the rental company's membership program if all of the following conditions are met:

(A) Prior to the enrollee's first rental as a participant in the program, the renter receives, in writing, the following:

(i) All of the disclosures required by paragraph (1) of subdivision (g) including the terms and conditions of the rental agreement then in effect.

(ii) A Web site address, as well as a contact number or address, where the enrollee can learn of any changes to the rental agreement or to the laws of this state governing rental agreements since the effective date of the rental company's most recent restatement of the rental agreement and distribution of that restatement to its members.

(B) At the commencement of each rental period, the renter is provided, on the rental record or the folder in which it is inserted, with a printed notice stating that he or she had either previously selected or declined an optional damage waiver and that the renter has the right to change preferences.

(C) At the commencement of each rental period, the rental company provides, on the rearview mirror, a hanger on which a statement is printed, in a box, in at least 12-point boldface type, notifying the renter that the collision damage waiver offered by the rental company may be duplicative of coverage that the customer maintains under his or her own policy of motor vehicle insurance. If it is not feasible to hang the

statement from the rearview mirror, it shall be hung from the steering wheel.

The hanger shall provide the renter a box to initial if he or she (not his or her employer) has previously accepted or declined the collision damage waiver and that he or she now wishes to change his or her decision to accept or decline the collision damage waiver, as follows:

''☐ If I previously accepted the collision damage waiver, I now decline it.

☐ If I previously declined the collision damage waiver, I now accept it.''

The hanger shall also provide a box for the enrollee to indicate whether this change applies to this rental transaction only or to all future rental transactions. The hanger shall also notify the renter that he or she may make such a change, prior to leaving the lot, by returning the form to an employee designated to receive the form who is present at the lot where the renter takes possession of the car, to receive any change in the rental agreement from the renter.

(2) (A) This subdivision is not effective unless the employee designated pursuant to subparagraph (E) of paragraph (8) of subdivision (a) is actually present at the required location.

(B) This subdivision does not relieve the rental company from those disclosures that are required to be made within the text of a contract or holder in which the contract is placed; in or on an advertisement containing a rental rate; or in a telephonic, in-person, or computer-transmitted quotation or reservation.

(u) The amendments made to this section during the 2001–02 Regular Session of the Legislature do not affect litigation pending on or before January 1, 2003, alleging a violation of Section 22325 of the Business and Professions Code as it read at the time the action was commenced.

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

SEC. 2. Section 1936 of the Civil Code, as added by Section 3 of Chapter 948 of the Statutes of 2002, as amended by Section 16 of Chapter 62 of the Statutes of 2003, is amended to read:

1936. (a) For the purpose of this section, the following definitions shall apply:

(1) ''Rental company'' means any person or entity in the business of renting passenger vehicles to the public.

(2) ''Renter'' means any person in any manner obligated under a contract for the lease or hire of a passenger vehicle from a rental company for a period of less than 30 days.

(3) ''Authorized driver'' means (A) the renter, (B) the renter's spouse if that person is a licensed driver and satisfies the rental company's minimum age requirement, (C) the renter's employer or coworker if they are engaged in business activity with the renter, are licensed drivers, and satisfy the rental company's minimum age requirement, and (D) any person expressly listed by the rental company on the renter's contract as an authorized driver.

(A) ''Customer facility charge'' means a fee required by an airport to be collected by a rental company from a renter for any of the following purposes:

(i) The fee shall be used to finance, design, and construct consolidated airport car rental facilities.

(ii) The fee shall be used to finance, design, construct, and provide common use transportation systems that move passengers between airport terminals and those consolidated car rental facilities.

(B) The aggregate amount to be collected may not exceed the reasonable costs, as determined by an independent audit paid for by the airport, to finance, design, and construct those facilities. Copies of the audit shall be provided to the Assembly and Senate Committees on Judiciary and Committees on Transportation. In the case of a transportation system, the audit shall also consider the reasonable costs of providing the transit system or busing network. At the Burbank Airport, and at all other airports, the fees designated as a customer facility charge may not be used to pay for terminal expansion, gate expansion, runway expansion, changes in hours of operation, or changes in the number of flights arriving or departing from the airport.

(C) The authorization given pursuant to this section for an airport to impose a customer facility charge shall become inoperative when the bonds used for financing are paid.

(4) ''Damage waiver'' means a rental company's agreement not to hold a renter liable for all or any portion of any damage or loss related to the rented vehicle, any loss of use of the rented vehicle, or any storage, impound, towing, or administrative charges.

(5) ''Electronic surveillance technology'' means a technological method or system used to observe, monitor, or collect information, including telematics, Global Positioning System (GPS), wireless technology, or location-based technologies. ''Electronic surveillance technology'' does not include event data recorders (EDR), sensing and diagnostic modules (SDM), or other systems that are used either:

(A) For the purpose of identifying, diagnosing, or monitoring functions related to the potential need to repair, service, or perform maintenance on the rental vehicle.

(B) As part of the vehicle's airbag sensing and diagnostic system in order to capture safety systems-related data for retrieval after a crash has occurred or in the event that the collision sensors are activated to prepare the decisionmaking computer to make the determination to deploy or not to deploy the airbag.

(6) ''Estimated time for replacement'' means the number of hours of labor, or fraction thereof, needed to replace damaged vehicle parts as set forth in collision damage estimating guides generally used in the vehicle repair business and commonly known as ''crash books.''

(7) ''Estimated time for repair'' means a good faith estimate of the reasonable number of hours of labor, or fraction thereof, needed to repair damaged vehicle parts.

(8) ''Passenger vehicle'' means a passenger vehicle as defined in Section 465 of the Vehicle Code.

(b) Except as limited by subdivision (c), a rental company and a renter may agree that the renter will be responsible for no more than all of the following:

(1) Physical or mechanical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from collision regardless of the cause of the damage.

(2) Loss due to theft of the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, provided that the rental company establishes by clear and convincing evidence that the renter or the authorized driver failed to exercise ordinary care while in possession of the vehicle. In addition, the renter shall be presumed to have no liability for any loss due to theft if (A) an authorized driver has possession of the ignition key furnished by the rental company or an authorized driver establishes that the ignition key furnished by the rental company was not in the vehicle at the time of the theft, and (B) an authorized driver files an official report of the theft with the police or other law enforcement agency within 24 hours of learning of the theft and reasonably cooperates with the rental company and the police or other law enforcement agency in providing information concerning the theft. The presumption set forth in this paragraph is a presumption affecting the burden of proof which the rental company may rebut by establishing that an authorized driver committed, or aided and abetted the commission of, the theft.

(3) Physical damage to the rented vehicle up to its fair market value, as determined in the customary market for the sale of that vehicle, resulting from vandalism occurring after, or in connection with, the theft of the rented vehicle; however, the renter shall have no liability for any

damage due to vandalism if the renter would have no liability for theft pursuant to paragraph (2).

(4) Physical damage to the rented vehicle up to a total of five hundred dollars ($500) resulting from vandalism unrelated to the theft of the rented vehicle.

(5) Actual charges for towing, storage, and impound fees paid by the rental company if the renter is liable for damage or loss.

(6) An administrative charge, which shall include the cost of appraisal and all other costs and expenses incidental to the damage, loss, repair, or replacement of the rented vehicle.

(c) The total amount of the renter's liability to the rental company resulting from damage to the rented vehicle may not exceed the sum of the following:

(1) The estimated cost of parts which the rental company would have to pay to replace damaged vehicle parts. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(2) The estimated cost of labor to replace damaged vehicle parts which may not exceed the product of (A) the rate for labor usually paid by the rental company to replace vehicle parts of the type that were damaged and (B) the estimated time for replacement. All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(3) (A) The estimated cost of labor to repair damaged vehicle parts which may not exceed the lesser of the following:

(i) The product of the rate for labor usually paid by the rental company to repair vehicle parts of the type that were damaged and the estimated time for repair.

(ii) The sum of the estimated labor and parts costs determined under paragraphs (1) and (2) to replace the same vehicle parts.

(B) All discounts and price reductions or adjustments that are or will be received by the rental company shall be subtracted from the estimate to the extent not already incorporated in the estimate or otherwise promptly credited or refunded to the renter.

(4) For the purpose of converting the estimated time for repair into the same units of time in which the rental rate is expressed, a day shall be deemed to consist of eight hours.

(5) Actual charges for towing, storage, and impound fees paid by the rental company.

(6) The administrative charge described in paragraph (6) of subdivision (b) may not exceed (A) fifty dollars ($50) if the total estimated cost for parts and labor is more than one hundred dollars ($100) up to and including five hundred dollars ($500), (B) one hundred dollars ($100) if the total estimated cost for parts and labor exceeds five hundred dollars ($500) up to and including one thousand five hundred dollars ($1,500), and (C) one hundred fifty dollars ($150) if the total estimated cost for parts and labor exceeds one thousand five hundred dollars ($1,500). No administrative charge may be imposed if the total estimated cost of parts and labor is one hundred dollars ($100) or less.

(d) (1) The total amount of an authorized driver's liability to the rental company, if any, for damage occurring during the authorized driver's operation of the rented vehicle may not exceed the amount of the renter's liability under subdivision (c).

(2) A rental company may not recover from the renter or other authorized driver an amount exceeding the renter's liability under subdivision (c).

(3) A claim against a renter resulting from damage or loss, excluding loss of use, to a rental vehicle shall be reasonably and rationally related to the actual loss incurred. A rental company shall mitigate damages where possible and may not assert or collect any claim for physical damage which exceeds the actual costs of the repairs performed or the estimated cost of repairs, if the rental company chooses not to repair the vehicle, including all discounts and price reductions. However, if the vehicle is a total loss vehicle, the claim may not exceed the total loss vehicle value established in accordance with procedures that are customarily used by insurance companies when paying claims on total loss vehicles, less the proceeds from salvaging the vehicle, if those proceeds are retained by the rental company.

(4) If insurance coverage exists under the renter's applicable personal or business insurance policy and the coverage is confirmed during regular business hours, the renter may require that the rental company submit any claims to the renter's applicable personal or business insurance carrier. The rental company may not make any written or oral representations that it will not present claims or negotiate with the renter's insurance carrier. For purposes of this paragraph, confirmation of coverage includes telephone confirmation from insurance company representatives during regular business hours. Upon request of the renter and after confirmation of coverage, the amount of claim shall be resolved between the insurance carrier and the rental company. The renter shall remain responsible for payment to the rental car company for any loss sustained that the renter's applicable personal or business insurance policy does not cover.

(5) A rental company may not recover from the renter or other authorized driver for any item described in subdivision (b) to the extent the rental company obtains recovery from any other person.

(6) This section applies only to the maximum liability of a renter or other authorized driver to the rental company resulting from damage to the rented vehicle and not to the liability of any other person.

(e) (1) Except as provided in subdivision (f), every damage waiver shall provide or, if not expressly stated in writing, shall be deemed to provide that the renter has no liability for any damage, loss, loss of use, or any cost or expense incident thereto.

(2) Except as provided in subdivision (f), every limitation, exception, or exclusion to any damage waiver is void and unenforceable.

(f) A rental company may provide in the rental contract that a damage waiver does not apply under any of the following circumstances:

(1) Damage or loss results from an authorized driver's (A) intentional, willful, wanton, or reckless conduct, (B) operation of the vehicle under the influence of drugs or alcohol in violation of Section 23152 of the Vehicle Code, (C) towing or pushing anything, or (D) operation of the vehicle on an unpaved road if the damage or loss is a direct result of the road or driving conditions.

(2) Damage or loss occurs while the vehicle is (A) used for commercial hire, (B) used in connection with conduct that could be properly charged as a felony, (C) involved in a speed test or contest or in driver training activity, (D) operated by a person other than an authorized driver, or (E) operated outside of the United States.

(3) Any authorized driver who has (A) provided fraudulent information to the rental company, or (B) provided false information and the rental company would not have rented the vehicle if it had instead received true information.

(g) (1) A rental company that offers or provides a damage waiver for any consideration in addition to the rental rate shall clearly and conspicuously disclose the following information in the rental contract or holder in which the contract is placed and, also, in signs posted at the place, such as the counter, where the renter signs the rental contract: (A) the nature of the renter's liability, e.g., liability for all collision damage regardless of cause, (B) the extent of the renter's liability, e.g., liability for damage or loss up to a specified amount, (C) the renter's personal insurance policy or the credit card used to pay for the car rental transaction may provide coverage for all or a portion of the renter's potential liability, (D) the renter should consult with his or her insurer to determine the scope of insurance coverage, including the amount of the deductible, if any, for which the renter is obligated, (E) the renter may purchase an optional damage waiver to cover all liability, subject to whatever exceptions the rental company expressly lists that are

permitted under subdivision (f), and (F) the range of charges for the damage waiver.

(2) In addition to the requirements of paragraph (1), a rental company that offers or provides a damage waiver shall, on that part of the contract where the renter indicates his or her acceptance or declination of the damage waiver, indicate that the purchase of the damage waiver is optional.

(3) The following is an example, for purposes of illustration and not limitation, of a notice fulfilling the requirements of paragraph (1) for a rental company that imposes liability on the renter for collision damage to the full value of the vehicle:

''NOTICE ABOUT YOUR FINANCIAL RESPONSIBILITY AND OPTIONAL DAMAGE WAIVER

You are responsible for all collision damage to the rented vehicle even if someone else caused it or the cause is unknown. You are responsible for the cost of repair up to the value of the vehicle, and towing, storage, and impound fees.

Your own insurance, or the issuer of the credit card you use to pay for the car rental transaction, may cover all or part of your financial responsibility for the rented vehicle. You should check with your insurance company, or credit card issuer, to find out about your coverage and the amount of the deductible, if any, for which you may be liable.

Further, if you use a credit card that provides coverage for your potential liability, you should check with the issuer to determine if you must first exhaust the coverage limits of your own insurance before the credit card coverage applies.

The rental company will not hold you responsible if you buy a damage waiver. But a damage waiver will not protect you if (list exceptions).''

(A) When the above notice is printed in the rental contract or holder in which the contract is placed, the following shall be printed immediately following the notice:

''The cost of an optional damage waiver is $____ for every (day or week).''

(B) When the above notice appears on a sign, the following shall appear immediately adjacent to the notice:

''The cost of an optional damage waiver is $____ to $____ for every (day or week), depending upon the vehicle rented.''

(h) Notwithstanding any other provision of law, a rental company may sell a damage waiver subject to the following rate limitations for each full or partial 24-hour rental day for the damage waiver:

(1) For rental vehicles that the rental company designates as an ''economy car,'' ''subcompact car,'' ''compact car,'' or any other term having similar meaning when offered for rental, or any other vehicle having a manufacturer's suggested retail price of nineteen thousand dollars ($19,000) or less, the rate may not exceed nine dollars ($9).

(2) For rental vehicles that have a manufacturer's suggested retail price from nineteen thousand one dollars ($19,001) to thirty-four thousand nine hundred ninety-nine dollars ($34,999), inclusive, and that are also either vehicles of next year's model, or not older than the previous year's model, the rate may not exceed fifteen dollars ($15). For those rental vehicles older than the previous year's model, the rate may not exceed nine dollars ($9).

(i) On or after January 1, 2003, the manufacturer's suggested retail prices described in subdivision (h) shall be adjusted annually to reflect changes from the previous year in the Consumer Price Index. For the purposes of this section, ''Consumer Price Index'' means the United States Consumer Price Index for All Urban Consumers, for all items.

(j) A rental company that disseminates in this state an advertisement containing a rental rate shall include in that advertisement a clearly readable statement of the charge for a damage waiver and a statement that a damage waiver is optional.

(k) (1) A rental company may not require the purchase of a damage waiver, optional insurance, or any other optional good or service.

(2) A rental company may not engage in any unfair, deceptive, or coercive conduct to induce a renter to purchase the damage waiver, optional insurance, or any other optional good or service, including conduct such as, but not limited to, refusing to honor the renter's reservation, limiting the availability of vehicles, requiring a deposit, or debiting or blocking the renter's credit card account for a sum equivalent to a deposit if the renter declines to purchase the damage waiver, optional insurance, or any other optional good or service.

(*l*) (1) In the absence of express permission granted by the renter subsequent to damage to, or loss of, the vehicle, a rental company may not seek to recover any portion of any claim arising out of damage to, or loss of, the rented vehicle by processing a credit card charge or causing any debit or block to be placed on the renter's credit card account.

(2) A rental company may not engage in any unfair, deceptive, or coercive tactics in attempting to recover or in recovering on any claim arising out of damage to, or loss of, the rented vehicle.

(m) (1) A customer facility charge may be collected by a rental company under the following circumstances:

(A) Collection of the fee by the rental company is required by an airport operated by a city, a county, a city and county, a joint powers authority, or a special district.

(B) The fee is calculated on a per-contract basis.

(C) The fee is a user fee, not a tax imposed upon real property or an incidence of property ownership under Article XIII D of the California Constitution.

(D) Except as otherwise provided in subparagraph (E), the fee shall be ten dollars ($10) per contract.

(E) If the fee imposed by the airport is for both a consolidated rental car facility and a common-use transportation system, the fee collected from customers of on-airport rental car companies shall be ten dollars ($10), but the fee imposed on customers of off-airport rental car companies who are transported on the common-use transportation system is proportionate to the costs of the common-use transportation system only. The fee is uniformly applied to each class of on-airport or off-airport customers, provided the airport requires off-airport customers to use the common-use transportation system.

(F) Revenues collected from the fee do not exceed the reasonable costs of financing, designing, constructing, or operating the facility or services and may not be used for any other purpose.

(G) The fee is separately identified on the rental agreement.

(H) This paragraph does not apply to airports whose fees are governed by Section 1936.5 of the Civil Code, Section 50474.1 of the Government Code, or Section 57.5 of the San Diego Unified Port District Act.

(2) Notwithstanding any other provision of law, including, but not limited to, Part 1 (commencing with Section 6001) to Part 1.7 (commencing with Section 7280), inclusive, of Division 2 of the Revenue and Taxation Code, the fees collected pursuant to this section, or any other law whereby a local agency operating an airport requires a rental car company to collect a facility financing fee from its customers, are not subject to sales, use, or transaction taxes.

(n) (1) A rental company shall only advertise, quote, and charge a rental rate that includes the entire amount except taxes, a customer facility charge, if any, and a mileage charge, if any, which a renter must pay to hire or lease the vehicle for the period of time to which the rental rate applies. A rental company may not charge in addition to the rental rate, taxes, a customer facility charge, if any, and a mileage charge, if any, any fee which must be paid by the renter as a condition of hiring or leasing the vehicle, such as, but not limited to, required fuel or airport surcharges other than customer facility charges, nor any fee for transporting the renter to the location where the rented vehicle will be delivered to the renter.

(2) In addition to the rental rate, taxes, customer facility charges, if any, and mileage charges, if any, a rental company may charge for an item or service provided in connection with a particular rental transaction if the renter could have avoided incurring the charge by choosing not to obtain or utilize the optional item or service. Items and services for which the rental company may impose an additional charge include, but are not limited to, optional insurance and accessories requested by the renter, service charges incident to the renter's optional return of the vehicle to a location other than the location where the vehicle was hired or leased, and charges for refueling the vehicle at the conclusion of the rental transaction in the event the renter did not return the vehicle with as much fuel as was in the fuel tank at the beginning of the rental. A rental company also may impose an additional charge based on reasonable age criteria established by the rental company.

(3) A rental company may not charge any fee for authorized drivers in addition to the rental charge for an individual renter.

(4) If a rental company states a rental rate in print advertisement or in a telephonic, in-person, or computer-transmitted quotation, the rental company shall clearly disclose in that advertisement or quotation the terms of any mileage conditions relating to the advertised or quoted rental rate, including, but not limited to, to the extent applicable, the amount of mileage and gas charges, the number of miles for which no charges will be imposed, and a description of geographic driving limitations within the United States and Canada.

(5) (A) When a rental rate is stated in an advertisement, quotation, or reservation in connection with a car rental at an airport where a customer facility charge is imposed, the rental company shall clearly disclose the existence and amount of the customer facility charge. For the purposes of this subparagraph, advertisements include radio, television, other electronic media, and print advertisements. For purposes of this subparagraph, quotations and reservations include those that are telephonic, in-person, and computer-transmitted. If the rate advertisement is intended to include transactions at more than one airport imposing a customer facility charge, a range of fees may be stated in the advertisement. However, all rate advertisements that include car rentals at airport destinations shall clearly and conspicuously include a toll-free telephone number whereby a customer can be told the specific amount of the customer facility charge to which the customer will be obligated.

(B) If any person or entity other than a rental car company, including a passenger carrier or a seller of travel services, advertises or quotes a rate for a car rental at an airport where a customer facility charge is imposed, that person or entity shall, provided they are provided with information about the existence and amount of the fee, to the extent not specifically

prohibited by federal law, clearly disclose the existence and amount of the fee in any telephonic, in-person, or computer-transmitted quotation at the time of making an initial quotation of a rental rate and at the time of making a reservation of a rental car. If a rental car company provides the person or entity with rate and customer facility charge information, the rental car company is not responsible for the failure of that person or entity to comply with this subparagraph when quoting or confirming a rate to a third person or entity.

(6) If a rental company delivers a vehicle to a renter at a location other than the location where the rental company normally carries on its business, the rental company may not charge the renter any amount for the rental for the period before the delivery of the vehicle. If a rental company picks up a rented vehicle from a renter at a location other than the location where the rental company normally carries on its business, the rental company may not charge the renter any amount for the rental for the period after the renter notifies the rental company to pick up the vehicle.

(o) A rental company may not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using electronic surveillance technology, except in the following circumstances:

(1) (A) When the equipment is used by the rental company only for the purpose of locating a stolen, abandoned, or missing rental vehicle after one of the following:

(i) The renter or law enforcement has informed the rental company that the vehicle has been stolen, abandoned, or missing.

(ii) The rental vehicle has not been returned following one week after the contracted return date, or by one week following the end of an extension of that return date.

(iii) The rental company discovers the rental vehicle has been stolen or abandoned, and, if stolen, it shall report the vehicle stolen to law enforcement by filing a stolen vehicle report, unless law enforcement has already informed the rental company that the vehicle has been stolen, abandoned, or is missing.

(B) If electronic surveillance technology is activated pursuant to subparagraph (A) of paragraph (1), a rental company shall maintain a record, in either electronic or written form, of information relevant to the activation of such technology. That information shall include the rental agreement, including the return date, and the date and time the electronic surveillance technology was activated. The record shall also include, if relevant, a record of any written or other communication with the renter, including communications regarding extensions of the rental, police reports or other written communication with law enforcement officials. The record shall be maintained for a period of at least 12 months from

the time the record is created and shall be made available upon the renter's request. The rental company shall maintain and furnish any explanatory codes necessary to read the record. A rental company shall not be required to maintain a record if electronic surveillance technology is activated to recover a rental vehicle that is stolen or missing at a time other than during a rental period.

(2) In response to a specific request from law enforcement pursuant to a subpoena or search warrant.

(3) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with GPS based technology that provides navigation assistance to the occupants of the rental vehicle, if the rental company does not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology, except for the purposes of discovering or repairing a defect in the technology and the information may then be used only for that purpose.

(4) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with electronic surveillance technology that allows for the remote locking or unlocking of the vehicle at the request of the renter, if the rental company does not use, access, or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology except as necessary to lock or unlock the vehicle.

(5) Nothing in this subdivision prohibits a rental company from equipping rental vehicles with electronic surveillance technology that allows the company to provide roadside assistance, such as towing, flat tire or fuel services, at the request of the renter, if the rental company does not use, access or obtain any information relating to the renter's use of the rental vehicle that was obtained using that technology, except as necessary to provide the requested roadside assistance.

(6) Nothing in this subdivision prohibits a rental company from obtaining, accessing, or using information from electronic surveillance technology for the sole purpose of determining the date and time the vehicle is returned to the rental company, and the total mileage driven and the vehicle fuel level of the returned vehicle. This paragraph, however, shall apply only after the renter has returned the vehicle to the rental company, and the information shall only be used for the purpose described in this paragraph.

(p) A rental company may not use electronic surveillance technology to track a renter in order to impose fines or surcharges relating to the renter's use of the rental vehicle.

(q) A renter may bring an action against a rental company for the recovery of damages and appropriate equitable relief for a violation of this section. The prevailing party shall be entitled to recover reasonable attorney's fees and costs.

(r) A rental company that brings an action against a renter for loss due to theft of the vehicle shall bring the action in the county in which the renter resides or, if the renter is not a resident of this state, in the jurisdiction in which the renter resides.

(s) Any waiver of any of the provisions of this section is void and unenforceable as contrary to public policy.

CHAPTER 318

An act to add Section 1353.7 to the Civil Code, and to amend Section 13132.7 of the Health and Safety Code, relating to roof covering materials.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1353.7 is added to the Civil Code, to read:

1353.7. (a) No common interest development may require a homeowner to install or repair a roof in a manner that is in violation of Section 13132.7 of the Health and Safety Code.

(b) Governing documents of a common interest development located within a very high fire severity zone, as designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, shall allow for at least one type of fire retardant roof covering material that meets the requirements of Section 13132.7 of the Health and Safety Code.

SEC. 2. Section 13132.7 of the Health and Safety Code is amended to read:

13132.7. (a) Within a very high fire hazard severity zone designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code and within a very high hazard severity zone designated by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every

existing structure, shall be a fire retardant roof covering that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(b) In all other areas, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class C as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(c) Notwithstanding subdivision (b), within state responsibility areas classified by the State Board of Forestry and Fire Protection pursuant to Article 3 (commencing with Section 4125) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code, except for those state responsibility areas designated as moderate fire hazard responsibility zones, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class B as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(d) (1) Notwithstanding subdivision (a), (b), or (c), within very high fire hazard severity zones designated by the Director of Forestry and Fire Protection pursuant to Article 9 (commencing with Section 4201) of Chapter 1 of Part 2 of Division 4 of the Public Resources Code or by a local agency pursuant to Chapter 6.8 (commencing with Section 51175) of Part 1 of Division 1 of Title 5 of the Government Code, the entire roof covering of every existing structure where more than 50 percent of the total roof area is replaced within any one-year period, every new structure, and any roof covering applied in the alteration, repair, or replacement of the roof of every existing structure, shall be a fire retardant roof covering that is at least class A as defined in the Uniform Building Code, as adopted and amended by the State Building Standards Commission.

(2) Paragraph (1) does not apply to any jurisdiction containing a very high fire hazard severity zone if the jurisdiction fulfills both of the following requirements:

(A) Adopts the model ordinance approved by the State Fire Marshal pursuant to Section 51189 of the Government Code or an ordinance that substantially conforms to the model ordinance of the State Fire Marshal.

(B) Transmits, upon adoption, a copy of the ordinance to the State Fire Marshal.

(e) The State Building Standards Commission shall incorporate the requirements set forth in subdivisions (a), (b), and (c) by publishing them as an amendment to the California Building Standards Code in accordance with Chapter 4 (commencing with Section 18935) of Part 2.5 of Division 13.

(f) Nothing in this section shall limit the authority of a city, county, city and county, or fire protection district in establishing more restrictive requirements, in accordance with current law, than those specified in this section.

(g) This section shall not affect the validity of an ordinance, adopted prior to the effective date for the relevant roofing standard specified in subdivisions (a) and (b), by a city, county, city and county, or fire protection district, unless the ordinance mandates a standard that is less stringent than the standards set forth in subdivision (a), in which case the ordinance shall not be valid on or after the effective date for the relevant roofing standard specified in subdivisions (a) and (b).

(h) Any qualified historical building or structure as defined in Section 18955 may, on a case-by-case basis, utilize alternative roof constructions as provided by the State Historical Building Code.

(i) The installer of the roof covering shall provide certification of the roof covering classification, as provided by the manufacturer or supplier, to the building owner and, when requested, to the agency responsible for enforcement of this part. The installer shall also install the roof covering in accordance with the manufacturer's listing.

(j) No wood roof covering materials shall be sold or applied in this state unless both of the following conditions are met:

(1) The materials have been approved and listed by the State Fire Marshal as complying with the requirements of this section.

(2) The materials have passed at least five years of the 10-year natural weathering test. The 10-year natural weathering test required by this subdivision shall be conducted in accordance with standard 15-2 of the 1994 edition of the Uniform Building Code at a testing facility recognized by the State Fire Marshal.

(k) The Insurance Commissioner shall accept the use of fire retardant wood roof covering material that complies with the requirements of this section, used in the partial repair or replacement of nonfire retardant wood roof covering material, as complying with the requirement in Section 2695.9 of Title 10 of the California Code of Regulations relative to matching replacement items in quality, color, and size.

(*l*) No common interest development, as defined in Section 1351 of the Civil Code, may require a homeowner to install or repair a roof in a manner that is in violation of this section. The governing documents, as defined in Section 1351 of the Civil Code, of a common interest development within a very high fire severity zone shall allow for at least

one type of fire retardant roof covering material that meets the requirements of this section.

CHAPTER 319

An act to amend Section 1749.5 of the Civil Code, relating to gift certificates.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1749.5 of the Civil Code is amended to read:

1749.5. (a) It is unlawful for any person or entity to sell a gift certificate to a purchaser that contains any of the following:

(1) An expiration date.

(2) A service fee, including, but not limited to, a service fee for dormancy, except as provided in subdivision (e).

(b) Any gift certificate sold after January 1, 1997, is redeemable in cash for its cash value, or subject to replacement with a new gift certificate at no cost to the purchaser or holder.

(c) A gift certificate sold without an expiration date is valid until redeemed or replaced.

(d) This section does not apply to any of the following gift certificates issued on or after January 1, 1998, provided the expiration date appears in capital letters in at least 10-point font on the front of the gift certificate:

(1) Gift certificates that are distributed by the issuer to a consumer pursuant to an awards, loyalty, or promotional program without any money or other thing of value being given in exchange for the gift certificate by the consumer.

(2) Gift certificates that are sold below face value at a volume discount to employers or to nonprofit and charitable organizations for fundraising purposes if the expiration date on those gift certificates is not more than 30 days after the date of sale.

(3) Gift certificates that are issued for a food product.

(e) Paragraph (2) of subdivision (a) does not apply to a dormancy fee on a gift card that meets all of the following criteria:

(1) The remaining value of the gift card is five dollars ($5) or less each time the fee is assessed.

(2) The fee does not exceed one dollar ($1) per month.

(3) There has been no activity on the gift card for 24 consecutive months, including, but not limited to, purchases, the adding of value, or balance inquiries.

(4) The holder may reload or add value to the gift card.

(5) A statement is printed on the gift card in at least 10-point font stating the amount of the fee, how often the fee will occur, that the fee is triggered by inactivity of the gift card, and at what point the fee will be charged. The statement may appear on the front or back of the gift card, but shall appear in a location where it is visible to any purchaser prior to the purchase thereof.

(f) An issuer of gift certificates may accept funds from one or more contributors toward the purchase of a gift certificate intended to be a gift for a recipient, provided that each contributor is provided with a full refund of the amount that he or she paid toward the purchase of the gift certificate upon the occurrence of all of the following:

(1) The funds are contributed for the purpose of being redeemed by the recipient by purchasing a gift certificate.

(2) The time in which the recipient may redeem the funds by purchasing a gift certificate is clearly disclosed in writing to the contributors and the recipient.

(3) The recipient does not redeem the funds within the time described in paragraph (2).

(g) The changes made to this section by the act adding this subdivision shall apply only to gift certificates issued on or after January 1, 2004.

CHAPTER 320

An act to amend Section 1416.22 of the Health and Safety Code, relating to health care, and making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1416.22 of the Health and Safety Code is amended to read:

1416.22. (a) To qualify for the licensing examination, an applicant must be at least 18 years of age, be a citizen of the United States or a legal resident, be of reputable and responsible character, demonstrate an

ability to comply with this chapter, and comply with at least one of the following requirements:

(1) Have a master's degree in nursing home administration or a related health administration field. The master's program in which the degree was obtained must have included an internship or residency of at least 480 hours in a skilled nursing facility or intermediate care facility.

(2) (A) With regard to applicants who have a current valid license as a nursing home administrator in another state and apply for licensure in this state, meet the minimum education requirements that existed in this state at the time the applicant was originally licensed in the other state.

(B) The minimum education requirements that have existed in California are as follows:

Prior to 7/1/73	None
From 7/1/73 to 6/30/74	30 semester units
From 7/1/74 to 6/30/75	45 semester units
From 7/1/75 to 6/30/80	60 semester units
From 7/1/80 to 1/1/02	Baccalaureate degree

(3) A doctorate degree in medicine and a current valid license as a physician and surgeon with 10 years of recent work experience, and the completion of a program-approved AIT Program of at least 1,000 hours.

(4) A baccalaureate degree, and the completion of a program-approved AIT Program of at least 1,000 hours.

(5) Ten years of recent full-time work experience, and a current license, as a licensed registered nurse, and the completion of a program-approved AIT Program of at least 1,000 hours. At least the most recent five years of the 10 years of work experience shall be in a supervisory or director of nursing position.

(6) Ten years of full-time work experience in any department of a skilled nursing facility, an intermediate care facility, or an intermediate care facility developmentally/disabled with at least 60 semester units (or 90 quarter units) of college or university courses, and the completion of a program-approved AIT Program of at least 1,000 hours. At least the most recent five years of the 10 years of work experience shall be in a position as a department manager.

(7) Ten years of full-time hospital administration experience in an acute care hospital with at least 60 semester units (or 90 quarter units) of college or university courses, and the completion of a program-approved AIT Program of at least 1,000 hours. At least the most recent five years of the 10 years of work experience shall be in a supervisory position.

(8) If the applicant and the preceptor provide compelling evidence that previous work experience of the applicant directly relates to nursing

home administrator duties, the program may accept a waiver exception to a portion of the AIT program that requires 1,000 hours.

(b) The applicant shall submit an official transcript that evidences the completion of required college and university courses, degrees, or both. An applicant who applies for the licensing examination on the basis of work experience shall submit a declaration signed under penalty of perjury, verifying his or her work experience. This declaration shall be signed by a licensed nursing home administrator, physician and surgeon, chief of staff, director of nurses, or registered nurse who can attest to the applicant's work experience.

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 prevent the sudden disruption of services provided to seniors residing in a number of the state's nursing homes, it is necessary that this act take effect immediately.

CHAPTER 321

An act to amend Section 49558 of the Education Code, relating to pupil records.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 49558 of the Education Code is amended to read:

49558. (a) All applications and records concerning any individual made or kept by any public officer or agency in connection with the administration of any provision of this code relating to free or reduced-price meal eligibility shall be confidential, and may not be open to examination for any purpose not directly connected with the administration of any free or reduced-price meal program, or any investigation, prosecution, or criminal or civil proceeding conducted in connection with the administration of any free or reduced-price meal program.

(b) Notwithstanding subdivision (a), a public officer or agency may allow the use by school district employees, who are authorized by the governing board of the school district, of individual records pertaining to pupil participation in any free or reduced-price meal program solely

for the purpose of disaggregation of academic achievement data or to identify pupils eligible for public school choice and supplemental educational services pursuant to the federal No Child Left Behind Act of 2001 (P.L. 107-110), if the public agency ensures the following:

(1) The public agency has adopted a policy that allows for the use of individual records for these purposes.

(2) No individual indicators of participation in any free or reduced-price meal program are maintained in the permanent record of any pupil, unless otherwise allowed by law.

(3) No public release of information regarding individual pupil participation in any free or reduced-price meal program is permitted.

(4) All other confidentiality provisions required by law are met.

(5) The information collected regarding individual pupils certified to participate in the free or reduced-price meal program is destroyed when it is no longer needed for its intended purpose.

(c) Notwithstanding subdivision (a), the school districts and county superintendents of schools may release information on the School Lunch Program application only to the local agency that determines eligibility under the Medi-Cal program, if the child is approved for free meals and if the applicant consents to the sharing of information pursuant to Section 49557.2.

CHAPTER 322

An act to amend Sections 365.6, 600.2, and 600.5 of the Penal Code, relating to guide dogs.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 365.6 of the Penal Code is amended to read:

365.6. (a) Any person who, with no legal justification, intentionally interferes with the use of a guide, signal, or service dog or mobility aid by harassing or obstructing the guide, signal, or service dog or mobility aid user or his or her guide, signal, or service dog, is guilty of a misdemeanor, punishable by imprisonment in a county jail not exceeding six months, or by a fine of not less than one thousand five hundred dollars ($1,500) nor more than two thousand five hundred dollars ($2,500), or both that fine and imprisonment.

(b) As used in this section, the following definitions shall apply:

(1) ''Mobility aid'' means any device enabling a person with a disability, as defined in subdivision (b) of Section 54 of the Civil Code, to travel independently, including, but not limited to, a guide, signal, or service dog, as defined in Section 54.1 of the Civil Code, a wheelchair, walker or white cane.

(2) ''Guide, signal, or service dog'' means any dog trained to do work or perform tasks for the benefit of an individual with a disability, including, but not limited to, guiding individuals with impaired vision, alerting individuals with impaired hearing to intruders or sounds, pulling a wheelchair, or fetching dropped items.

(c) Nothing in this section is intended to affect any civil remedies available for a violation of this section.

SEC. 2. Section 600.2 of the Penal Code is amended to read:

600.2. (a) It is a crime for any person to permit any dog which is owned, harbored, or controlled by him or her to cause injury to or the death of any guide, signal, or service dog, as defined by Section 54.1 of the Civil Code, while the guide, signal, or service dog is in discharge of its duties.

(b) A violation of this section is an infraction punishable by a fine not to exceed two hundred fifty dollars ($250) if the injury or death to any guide, signal, or service dog is caused by the person's failure to exercise ordinary care in the control of his or her dog.

(c) A violation of this section is a misdemeanor if the injury or death to any guide, signal, or service dog is caused by the person's reckless disregard in the exercise of control over his or her dog, under circumstances that constitute such a departure from the conduct of a reasonable person as to be incompatible with a proper regard for the safety and life of any guide, signal, or service dog. A violation of this subdivision shall be punishable by imprisonment in a county jail not exceeding one year, or by a fine of not less than two thousand five hundred dollars ($2,500) nor more than five thousand dollars ($5,000), or both. The court shall consider the costs ordered pursuant to subdivision (d) when determining the amount of any fines.

(d) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the person with a disability who has custody or ownership of the guide, signal, or service dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court. The costs ordered pursuant to this subdivision shall be paid prior to any fines.

SEC. 3. Section 600.5 of the Penal Code is amended to read:

600.5. (a) Any person who intentionally causes injury to or the death of any guide, signal, or service dog, as defined by Section 54.1 of the Civil Code, while the dog is in discharge of its duties, is guilty of a

misdemeanor, punishable by imprisonment in a county jail not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both a fine and imprisonment. The court shall consider the costs ordered pursuant to subdivision (b) when determining the amount of any fines.

(b) In any case in which a defendant is convicted of a violation of this section, the defendant shall be ordered to make restitution to the person with a disability who has custody or ownership of the dog for any veterinary bills and replacement costs of the dog if it is disabled or killed, or other reasonable costs deemed appropriate by the court. The costs ordered pursuant to this subdivision shall be paid prior to any fines.

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 323

An act to amend Section 51938 of the Education Code, relating to instruction.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 51938 of the Education Code is amended to read:

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 do all of the following:

(1) Advise the parent or guardian that written and audiovisual 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. A school district may provide comprehensive sexual health education or HIV/AIDS prevention education, to be taught by outside consultants, and may hold an assembly to deliver comprehensive sexual health education or HIV/AIDS prevention education by guest speakers, but if it elects to provide comprehensive sexual health education or HIV/AIDS prevention education in either of these manners, the notice shall include the date of the instruction, the name of the organization or affiliation of each guest speaker, and information stating the right of the parent or guardian to request a copy of this section, Section 51933, and Section 51934. If arrangements for this instruction are made after the beginning of the school year, notice shall be made by mail or another commonly used method of notification, no fewer than 14 days before the instruction is delivered.

(3) Include 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.

(c) The use of outside consultants or guest speakers as described in paragraph (2) of subdivision (a) is within the discretion of the school district.

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CHAPTER 324

An act to amend Sections 14252 and 14703 of, and to repeal Division 18 (commencing with Section 40000) of, the Financial Code, relating to financial institutions.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 14252 of the Financial Code is amended to read:

14252. (a) A credit union with total assets equal to or greater than ten million dollars ($10,000,000) shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, file with the commissioner an audit report for the fiscal year.

(b) The audit report called for in subdivision (a) shall comply with all of the following provisions:

(1) The audit report shall contain the audited financial statements of the credit union for, or as of the end of, the fiscal year, prepared in accordance with generally accepted accounting principles that the commissioner may specify, and any other information that the commissioner may specify.

(2) The audit report shall be based upon an audit of the credit union, conducted in accordance with generally accepted auditing standards, and any other requirements that the commissioner may specify.

(3) The audit report shall be prepared by an independent certified public accountant or independent public accountant who is acceptable to the commissioner.

(4) The audit report shall include, or be accompanied by, a certificate or opinion of the independent certified public accountant or independent public accountant that is satisfactory in form and content to the commissioner. If the certificate or opinion is qualified, the commissioner may order the credit union to take any action that the commissioner may find necessary or advisable to enable the independent certified public accountant or independent public accountant to remove the qualification.

(c) A credit union with total assets of less than ten million dollars ($10,000,000) shall, within 105 days after the end of each fiscal year or within any extended time that the commissioner may specify, file with the commissioner an audit report for the fiscal year.

(d) The audit report called for in subdivision (c) may comply with all the provisions of subdivision (b), or may consist of alternative

procedures acceptable to the commissioner. An alternative procedures audit may be performed by any of the following:

(1) An independent certified public accountant.

(2) An independent public accountant.

(3) The credit union's supervisory committee, provided that the audit complies with the requirements of Section 14533.

(e) Notwithstanding subdivision (d), the commissioner may reject an alternative procedures audit that he or she determines is not satisfactory. If the commissioner rejects an alternative procedures audit for any reason, he or she may order a credit union to obtain an audit that is satisfactory to the commissioner.

(f) The commissioner may, by order or regulation, either unconditionally or upon specified terms and conditions, grant an exemption from this section in any case where the commissioner finds that the requirements of this section are not necessary or advisable.

SEC. 2. Section 14703 of the Financial Code is amended to read:

14703. A credit union shall establish and maintain an allowance-for-loan-losses account in accordance with generally accepted accounting principles. The commissioner may order the credit union to increase the amount of its allowance-for-loan-losses account if the commissioner finds that the amount of the account is not adequate.

SEC. 3. Division 18 (commencing with Section 40000) of the Financial Code is repealed.

CHAPTER 325

An act to amend Section 560 of the Streets and Highways Code, relating to highways.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 560 of the Streets and Highways Code is amended to read:

560. (a) Route 260 is from Route 61 in Alameda to Route 880 in Oakland near Seventh and Harrison Streets.

(b) (1) The commission may relinquish to the City of Alameda the portion of Route 260 that is located within the city limits of that city and that is between Atlantic Avenue and Central Avenue, upon the terms and conditions the commission finds to be in the best interests of the state,

if the department and the city enter into an agreement providing for that relinquishment.

(2) A relinquishment under this subdivision shall become effective immediately following the recordation by the county recorder of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, the relinquished portion of Route 260 shall cease to be a state highway.

(4) For the portion of Route 260 that is relinquished under this subdivision, the City of Alameda shall maintain within its jurisdiction signs directing motorists to the continuation of Route 260.

CHAPTER 326

An act to amend Section 26614 of the Government Code, relating to search and rescue.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 26614 of the Government Code is amended to read:

26614. The board of supervisors of a county may authorize the sheriff to search for and rescue persons who are lost or are in danger of their lives within or in the immediate vicinity of the county. The expense incurred by the sheriff in the performance of those duties shall be a proper county charge. Authorization for search and rescue activities shall be consistent with guidelines and operating plans contained in the Search and Rescue Model Operating Plan, as developed and adopted by the Office of Emergency Services in consultation with fire protection and law enforcement service providers. The Office of Emergency Services shall make the plan available to counties and fire protection and law enforcement agencies for use and adoption by the board of supervisors and the governing boards of all search and rescue providers. If the board assigns responsibility for search and rescue activities in a manner that is inconsistent with these model operating guidelines, the board shall adopt a resolution to clarify why the local model provides better protections than the Search and Rescue Model Operating Plan, as developed by the Office of Emergency Services, to residents in need of county search and rescue services. Counties are encouraged to adopt their countywide search and rescue plans and to review them on a regular

basis. A review of a countywide search and rescue plan shall include, but is not limited to, changes made to the Search and Rescue Model Operating Plan by the Office of Emergency Services. This section shall not be construed to vest any additional powers for search and rescue upon sheriffs or any other public safety agency that provides search and rescue.

CHAPTER 327

An act to amend Sections 26726, 26731, and 26733.5 of the Government Code, relating to law enforcement fees.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 26726 of the Government Code is amended to read:

26726. (a) The fee for keeping and caring for property under a writ of attachment, execution, possession, or sale shall be one hundred twenty dollars ($120) when necessarily employed for any eight-hour period or any part thereof. If an additional keeper or keepers are required during these periods, the fee for the additional keeper or keepers shall be the same as fixed, but, in no event shall any one keeper receive more than two hundred forty dollars ($240) during any 24-hour period when so employed.

(b) In addition to the fees provided by Section 26721, the fee for maintaining custody of property under levy by the use of a keeper is thirty dollars ($30) for each day custody is maintained after the first day.

(c) Notwithstanding any other fee charged, a keeper shall receive forty dollars ($40) when, pursuant to Section 26738, a levying officer prepares a not-found return.

SEC. 2. Section 26731 of the Government Code is amended to read:

26731. Ten dollars ($10) of any fee collected by the sheriff's civil division or marshal under Sections 26721, 26722, 26725, 26726, 26728, 26730, 26733.5, 26734, 26736, 26738, 26742, 26743, 26744, and 26750 of the Government Code shall be deposited in a special fund in the county treasury. A separate accounting of funds deposited shall be maintained for each depositor, and funds deposited shall be for the exclusive use of the sheriff's civil division or marshal.

Ninety-five percent of the moneys in the special fund shall be expended to supplement the costs of the depositor for the

implementation, maintenance, and purchase of auxiliary equipment and furnishings for automated systems or other nonautomated operational equipment and furnishings deemed necessary by the sheriff's civil division or marshal. Five percent of the moneys in the special fund shall be used to supplement the expenses of the sheriff's civil division or marshal in administering the funds.

SEC. 3. Section 26733.5 of the Government Code is amended to read:

26733.5. The fee for serving a writ of possession of real property on an occupant or the occupants or for posting and serving a copy on the judgment debtor is seventy-five dollars ($75). The additional fee for removing an occupant or occupants from the premises and putting a person in possession of the premises is fifty dollars ($50). The fee for reposting of a notice to vacate shall be pursuant to Section 26721.

CHAPTER 328

An act to amend Section 1717.5 of the Civil Code, relating to attorney's fees.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1717.5 of the Civil Code is amended to read:

1717.5. (a) Except as otherwise provided by law or where waived by the parties to an agreement, in any action on a contract based on a book account, as defined in Section 337a of the Code of Civil Procedure, entered into on or after January 1, 1987, which does not provide for attorney's fees and costs, as provided in Section 1717, the party who is determined to be the party prevailing on the contract shall be entitled to reasonable attorney's fees, as provided below, in addition to other costs. The prevailing party on the contract shall be the party who recovered a greater relief in the action on the contract. The court may determine that there is no party prevailing on the contract for purposes of this section.

Reasonable attorney's fees awarded pursuant to this section for the prevailing party bringing the action on the book account shall be fixed by the court in an amount that shall not exceed the lesser of: (1) eight hundred dollars ($800) for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family, or household purposes; and one thousand

dollars ($1,000) for all other book accounts to which this section applies; or (2) 25 percent of the principal obligation owing under the contract.

For the party against whom the obligation on the book account was asserted in the action subject to this section, if that party is found to have no obligation owing on a book account, the court shall award that prevailing party reasonable attorney's fees not to exceed eight hundred dollars ($800) for book accounts based upon an obligation owing by a natural person for goods, moneys, or services which were primarily for personal, family, or household purposes, and one thousand dollars ($1,000) for all other book accounts to which this section applies. These attorney's fees shall be an element of the costs of the suit.

If there is a written agreement between the parties signed by the person to be charged, the fees provided by this section may not be imposed unless that agreement contains a statement that the prevailing party in any action between the parties is entitled to the fees provided by this section.

(b) The attorney's fees allowed pursuant to this section shall be the lesser of either the maximum amount allowed by this section, the amount provided by any default attorney's fee schedule adopted by the court applicable to the suit, or an amount as otherwise provided by the court. Any claim for attorney's fees pursuant to this section in excess of the amounts set forth in the default attorney's fee schedule shall be reasonable attorney's fees, as proved by the party, as actual and necessary for the claim that is subject to this section.

(c) This section does not apply to any action in which an insurance company is a party nor shall an insurance company, surety, or guarantor be liable under this section, in the absence of a specific contractual provision, for the attorney's fees and costs awarded a prevailing party against its insured.

This section does not apply to any action in which a bank, a savings association, a federal association, a state or federal credit union, or a subsidiary, affiliate, or holding company of any of those entities, or an authorized industrial loan company, a licensed consumer finance lender, or a licensed commercial finance lender, is a party.

CHAPTER 329

An act to amend Section 369.5 of the Welfare and Institutions Code, relating to dependent children.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 369.5 of the Welfare and Institutions Code is amended to read:

369.5. (a) If a child is adjudged a dependent child of the court under Section 300 and the child has been removed from the physical custody of the parent under Section 361, only a juvenile court judicial officer shall have authority to make orders regarding the administration of psychotropic medications for that child. The juvenile court may issue a specific order delegating this authority to a parent upon making findings on the record that the parent poses no danger to the child and has the capacity to authorize psychotropic medications. Court authorization for the administration of psychotropic medication shall be based on a request from a physician, indicating the reasons for the request, a description of the child's diagnosis and behavior, the expected results of the medication, and a description of any side effects of the medication. On or before July 1, 2000, the Judicial Council shall adopt rules of court and develop appropriate forms for implementation of this section.

(b) (1) In counties in which the county child welfare agency completes the request for authorization for the administration of psychotropic medication, the agency is encouraged to complete the request within three business days of receipt from the physician of the information necessary to fully complete the request.

(2) Nothing in this subdivision is intended to change current local practice or local court rules with respect to the preparation and submission of requests for authorization for the administration of psychotropic medication.

(c) Within seven court days from receipt by the court of a completed request, the juvenile court judicial officer shall either approve or deny in writing a request for authorization for the administration of psychotropic medication to the child, or shall, upon a request by the parent, the legal guardian, or the child's attorney, or upon its own motion, set the matter for hearing.

(d) Psychotropic medication or psychotropic drugs are those medications administered for the purpose of affecting the central nervous system to treat psychiatric disorders or illnesses. These medications include, but are not limited to, anxiolytic agents, antidepressants, mood stabilizers, antipsychotic medications, anti-Parkinson agents, hypnotics, medications for dementia, and psychostimulants.

(e) Nothing in this section is intended to supersede local court rules regarding a minor's right to participate in mental health decisions.

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CHAPTER 330

An act to repeal and add Section 1720.4 of the Labor Code, relating to public works, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1720.4 of the Labor Code is repealed.

SEC. 2. Section 1720.4 is added to the Labor Code, to read:

1720.4. (a) This chapter shall not apply to any of the following work:

(1) Any work performed by a volunteer. For purposes of this section, ''volunteer'' means an individual who performs work for civic, charitable, or humanitarian reasons for a public agency or corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, without promise, expectation, or receipt of any compensation for work performed.

(A) An individual shall be considered a volunteer only when his or her services are offered freely and without pressure and coercion, direct or implied, from an employer.

(B) An individual may receive reasonable meals, lodging, transportation, and incidental expenses or nominal nonmonetary awards without losing volunteer status if, in the entire context of the situation, those benefits and payments are not a substitute form of compensation for work performed.

(C) An individual shall not be considered a volunteer if the person is otherwise employed for compensation at any time (i) in the construction, alteration, demolition, installation, repair, or maintenance work on the same project, or (ii) by a contractor, other than a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, that is receiving payment to perform construction, alteration, demolition, installation, repair, or maintenance work on the same project.

(2) Any work performed by a volunteer coordinator. For purposes of this section, ''volunteer coordinator'' means an individual paid by a corporation qualified under Section 501(c)(3) of the Internal Revenue Code as a tax-exempt organization, to oversee or supervise volunteers. An individual may be considered a volunteer coordinator even if the individual performs some nonsupervisory work on a project alongside the volunteers, so long as the individual's primary responsibility on the

project is to oversee or supervise the volunteers rather than to perform nonsupervisory work.

(3) Any work performed by members of the California Conservation Corps or of Community Conservation Corps certified by the California Conservation Corps pursuant to Section 14507.5 of the Public Resources Code.

(b) This section shall apply retroactively to otherwise covered work concluded on or after January 1, 2002, to the extent permitted by law.

(c) This section shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statue, which is enacted before January 1, 2009, deletes or extends that date.

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

In order to encourage citizen initiative and volunteer action in state service and to eliminate all legal disincentives and impediments to volunteering on public works projects, it is necessary that this bill take effect immediately.

CHAPTER 331

An act to amend Section 1793.2 of the Civil Code, relating to consumer warranties.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1793.2 of the Civil Code is amended to read:

1793.2. (a) Every manufacturer of consumer goods sold in this state and for which the manufacturer has made an express warranty shall:

(1) (A) Maintain in this state sufficient service and repair facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of those warranties or designate and authorize in this state as service and repair facilities independent repair or service facilities reasonably close to all areas where its consumer goods are sold to carry out the terms of the warranties.

(B) As a means of complying with this paragraph, a manufacturer may enter into warranty service contracts with independent service and repair facilities. The warranty service contracts may provide for a fixed schedule of rates to be charged for warranty service or warranty repair

work. However, the rates fixed by those contracts shall be in conformity with the requirements of subdivision (c) of Section 1793.3. The rates established pursuant to subdivision (c) of Section 1793.3, between the manufacturer and the independent service and repair facility, do not preclude a good faith discount that is reasonably related to reduced credit and general overhead cost factors arising from the manufacturer's payment of warranty charges direct to the independent service and repair facility. The warranty service contracts authorized by this paragraph may not be executed to cover a period of time in excess of one year, and may be renewed only by a separate, new contract or letter of agreement between the manufacturer and the independent service and repair facility.

(2) In the event of a failure to comply with paragraph (1) of this subdivision, be subject to Section 1793.5.

(3) Make available to authorized service and repair facilities sufficient service literature and replacement parts to effect repairs during the express warranty period.

(b) Where those service and repair facilities are maintained in this state and service or repair of the goods is necessary because they do not conform with the applicable express warranties, service and repair shall be commenced within a reasonable time by the manufacturer or its representative in this state. Unless the buyer agrees in writing to the contrary, the goods shall be serviced or repaired so as to conform to the applicable warranties within 30 days. Delay caused by conditions beyond the control of the manufacturer or its representatives shall serve to extend this 30-day requirement. Where delay arises, conforming goods shall be tendered as soon as possible following termination of the condition giving rise to the delay.

(c) The buyer shall deliver nonconforming goods to the manufacturer's service and repair facility within this state, unless, due to reasons of size and weight, or method of attachment, or method of installation, or nature of the nonconformity, delivery cannot reasonably be accomplished. If the buyer cannot return the nonconforming goods for any of these reasons, he or she shall notify the manufacturer or its nearest service and repair facility within the state. Written notice of nonconformity to the manufacturer or its service and repair facility shall constitute return of the goods for purposes of this section. Upon receipt of that notice of nonconformity, the manufacturer shall, at its option, service or repair the goods at the buyer's residence, or pick up the goods for service and repair, or arrange for transporting the goods to its service and repair facility. All reasonable costs of transporting the goods when a buyer cannot return them for any of the above reasons shall be at the manufacturer's expense. The reasonable costs of transporting nonconforming goods after delivery to the service and repair facility

until return of the goods to the buyer shall be at the manufacturer's expense.

(d) (1) Except as provided in paragraph (2), if the manufacturer or its representative in this state does not service or repair the goods to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either replace the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(2) If the manufacturer or its representative in this state is unable to service or repair a new motor vehicle, as that term is defined in paragraph (2) of subdivision (e) of Section 1793.22, to conform to the applicable express warranties after a reasonable number of attempts, the manufacturer shall either promptly replace the new motor vehicle in accordance with subparagraph (A) or promptly make restitution to the buyer in accordance with subparagraph (B). However, the buyer shall be free to elect restitution in lieu of replacement, and in no event shall the buyer be required by the manufacturer to accept a replacement vehicle.

(A) In the case of replacement, the manufacturer shall replace the buyer's vehicle with a new motor vehicle substantially identical to the vehicle replaced. The replacement vehicle shall be accompanied by all express and implied warranties that normally accompany new motor vehicles of that specific kind. The manufacturer also shall pay for, or to, the buyer the amount of any sales or use tax, license fees, registration fees, and other official fees which the buyer is obligated to pay in connection with the replacement, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(B) In the case of restitution, the manufacturer shall make restitution in an amount equal to the actual price paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, but excluding nonmanufacturer items installed by a dealer or the buyer, and including any collateral charges such as sales tax, license fees, registration fees, and other official fees, plus any incidental damages to which the buyer is entitled under Section 1794, including, but not limited to, reasonable repair, towing, and rental car costs actually incurred by the buyer.

(C) When the manufacturer replaces the new motor vehicle pursuant to subparagraph (A), the buyer shall only be liable to pay the manufacturer an amount directly attributable to use by the buyer of the replaced vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity.

When restitution is made pursuant to subparagraph (B), the amount to be paid by the manufacturer to the buyer may be reduced by the manufacturer by that amount directly attributable to use by the buyer prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. The amount directly attributable to use by the buyer shall be determined by multiplying the actual price of the new motor vehicle paid or payable by the buyer, including any charges for transportation and manufacturer-installed options, by a fraction having as its denominator 120,000 and having as its numerator the number of miles traveled by the new motor vehicle prior to the time the buyer first delivered the vehicle to the manufacturer or distributor, or its authorized service and repair facility for correction of the problem that gave rise to the nonconformity. Nothing in this paragraph shall in any way limit the rights or remedies available to the buyer under any other law.

(e) (1) If the goods cannot practicably be serviced or repaired by the manufacturer or its representative to conform to the applicable express warranties because of the method of installation or because the goods have become so affixed to real property as to become a part thereof, the manufacturer shall either replace and install the goods or reimburse the buyer in an amount equal to the purchase price paid by the buyer, including installation costs, less that amount directly attributable to use by the buyer prior to the discovery of the nonconformity.

(2) With respect to claims arising out of deficiencies in the construction of a new residential dwelling, paragraph (1) shall not apply to either of the following:

(A) A product that is not a manufactured product, as defined in subdivision (g) of Section 896.

(B) A claim against a person or entity that is not the manufacturer that originally made the express warranty for that manufactured product.

CHAPTER 332

An act to amend Sections 636, 636.1, 11404, 16051.1, and 16506 of the Welfare and Institutions Code, relating to child welfare services.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 636 of the Welfare and Institutions Code is amended to read:

636. (a) If it appears upon the hearing that the minor has violated an order of the juvenile court or has escaped from a commitment of the juvenile court or that it is a matter of immediate and urgent necessity for the protection of the minor or reasonably necessary for the protection of the person or property of another that he or she be detained or that the minor is likely to flee to avoid the jurisdiction of the court, and that continuance in the home is contrary to the minor's welfare, the court may make its order that the minor be detained in the juvenile hall or other suitable place designated by the juvenile court for a period not to exceed 15 judicial days and shall enter said order together with its findings of fact in support thereof in the records of the court. The circumstances and gravity of the alleged offense may be considered, in conjunction with other factors, to determine whether it is a matter of immediate and urgent necessity for the protection of the minor or the person or property of another that the minor be detained.

(b) If the court finds that the criteria of Section 628.1 are applicable, the court shall place the minor on home supervision for a period not to exceed 15 judicial days, and shall enter the order together with its findings of fact in support thereof in the records of the court. If the court releases the minor on home supervision, the court may continue, modify, or augment any conditions of release previously imposed by the probation officer, or may impose new conditions on a minor released for the first time. If there are new or modified conditions, the minor shall be required to sign a written promise to obey those conditions pursuant to Section 628.1.

(c) If the probation officer is recommending that the minor be detained, the probation officer shall submit to the court documentation, as follows:

(1) Documentation that continuance in the home is contrary to the minor's welfare shall be submitted to the court as part of the detention report prepared pursuant to Section 635.

(2) Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the minor from the home and documentation of the nature and results of the services provided shall be submitted to the court either as part of the detention report prepared pursuant to Section 635, or as part of a case plan prepared pursuant to Section 636.1, but in no case later than 60 days from the date of detention.

(d) Before detaining the minor, the court shall determine whether continuance in the home is contrary to the minor's welfare and whether

there are available services that would prevent the need for further detention. The court shall make that determination on a case-by-case basis and shall make reference to the documentation provided by the probation officer or other evidence relied upon in reaching its decision.

(1) If the minor can be returned to the custody of his or her parent or legal guardian at the detention hearing, through the provision of services to prevent removal, the court shall release the minor to the physical custody of his or her parent or legal guardian and order that those services shall be provided.

(2) If the minor cannot be returned to the custody of his or her parent or legal guardian at the detention hearing, the court shall state the facts upon which the detention is based. The court shall make the following findings on the record and reference the probation officer's report or other evidence relied upon to make its determinations:

(A) Whether continuance in the home of the parent or legal guardian is contrary to the minor's welfare.

(B) Whether reasonable efforts have been made to safely maintain the minor in the home of his or her parent or legal guardian and to prevent or eliminate the need for removal of the minor from his or her home. This finding shall be made at the detention hearing if possible, but in no case later than 60 days following the minor's removal from the home.

(3) If the minor cannot be returned to the custody of his or her parent or legal guardian at the detention hearing, the court shall make the following orders:

(A) The probation officer shall provide services as soon as possible which will enable the minor's parent or legal guardian to obtain such assistance as may be needed to enable the parent or guardian to effectively provide the care and control necessary for the minor to return to the home.

(B) The minor's placement and care shall be the responsibility of the probation department pending disposition or further order of the court.

(4) If the matter is set for rehearing pursuant to Section 637, or continued pursuant to Section 638, or continued for any other reason, the court shall find that the continuance of the minor in the parent's or guardian's home is contrary to the minor's welfare at the initial petition hearing or order the release of the minor from custody.

(e) Whether the minor is returned home or detained, the court shall order the minor's parent or guardian to cooperate with the probation officer in obtaining those services described in paragraph (1) or in subparagraph (A) of paragraph (3).

SEC. 2. Section 636.1 of the Welfare and Institutions Code is amended to read:

636.1. (a) When a minor is detained pursuant to Section 636 following a finding by the court that continuance in the home is contrary

to the minor's welfare and the minor is at risk of entering foster care, the probation officer shall, within 60 calendar days of initial removal, or by the date of the disposition hearing, whichever occurs first, complete a case plan.

(b) If the probation officer believes that reasonable efforts by the minor, his or her parent or legal guardian, and the probation officer will enable the minor to safely return home, the case plan shall focus on those issues and activities associated with those efforts, including a description of the strengths and needs of the minor and his or her family and identification of the services that will be provided to the minor and his or her family in order to reduce or eliminate the need for the minor to be placed in foster care and make it possible for the minor to safely return to his or her home.

(c) If, based on the information available to the probation officer, the probation officer believes that foster care placement is the most appropriate disposition, the case plan shall include all the information required by Section 706.6.

SEC. 3. Section 11404 of the Welfare and Institutions Code is amended to read:

11404. (a) Except as provided in Section 11405, a child is not eligible for AFDC-FC unless responsibility for placement and care of the child is with the county welfare department or Indian tribe that entered into an agreement pursuant to Section 10553.1, the county probation department which has an agreement with the county welfare department, or a licensed public adoption agency, licensed private adoption agency or the department.

(b) In order for the child to be eligible for AFDC-FC, the agency with responsibility for the child's placement and care shall in accordance with departmental regulations:

(1) For children removed after October 1, 1983, document that it provided preplacement preventive services to the child prior to the child's placement in foster care, and document why provisions of these services were not successful in maintaining the child in his or her home, unless it is documented that these services were not provided due to:

(A) Either the voluntary relinquishment of the child by one or both parents or court action declaring a child free from the custody and control of one or both parents.

(B) The child's residence with a nonrelated legal guardian.

(2) Develop a written assessment of the reasons necessitating the child's placement in foster care and the treatment needs of the child while in foster care to be updated by the agency no less frequently than once every six months. Where the child is a parent who has a child living with him or her in the same eligible facility, the assessment shall also address the needs of his or her child.

(3) Develop a case plan for the child within a maximum of 60 days of placement.

(4) Ensure that services are provided to return the child to his or her own home or establish an alternative permanent placement for the child if return home is not possible or is inappropriate.

SEC. 4. Section 16501.1 of the Welfare and Institutions Code is amended to read:

16501.1. (a) (1) The Legislature finds and declares that the foundation and central unifying tool in child welfare services is the case plan.

(2) The Legislature further finds and declares that a case plan ensures that the child receives protection and safe and proper care and case management, and that services are provided to the child and parents or other caretakers, as appropriate, in order to improve conditions in the parent's home, to facilitate the safe return of the child to a safe home or the permanent placement of the child, and to address the needs of the child while in foster care.

(b) (1) A case plan shall be based upon the principles of this section and shall document that a preplacement assessment of the service needs of the child and family, and preplacement preventive services, have been provided, and that reasonable efforts to prevent out-of-home placement have been made.

(2) In determining the reasonable services to be offered or provided, the child's health and safety shall be the paramount concerns.

(3) Reasonable services shall be offered or provided to make it possible for a child to return to a safe home environment, unless, pursuant to subdivisions (b) and (e) of Section 361.5, the court determines that reunification services shall not be provided.

(4) If reasonable services are not ordered, or are terminated, reasonable efforts shall be made to place the child in a timely manner in accordance with the permanent plan and to complete all steps necessary to finalize the permanent placement of the child.

(c) (1) If out-of-home placement is used to attain case plan goals, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or most familylike and the most appropriate setting that is available and in close proximity to the parent's home, proximity to the child's school, consistent with the selection of the environment best suited to meet the child's special needs and best interests, or both. The selection shall consider, in order of priority, placement with relatives, tribal members, and foster family, group care, and residential treatment pursuant to Section 7950 of the Family Code.

(2) In addition to the requirements of paragraph (1), and taking into account other statutory considerations regarding placement, the selection of the most appropriate home that will meet the child's special

needs and best interests shall also promote educational stability by taking into consideration proximity to the child's school attendance area.

(d) A written case plan shall be completed within a maximum of 60 days of the initial removal of the child or of the in-person response required under subdivision (f) of Section 16501 if the child has not been removed from his or her home, or by the date of the dispositional hearing pursuant to Section 358, whichever occurs first. The case plan shall be updated, as the service needs of the child and family dictate. At a minimum, the case plan shall be updated in conjunction with each status review hearing conducted pursuant to Section 366.21, and the hearing conducted pursuant to Section 366.26, but no less frequently than once every six months. Each updated case plan shall include a description of the services that have been provided to the child under the plan and an evaluation of the appropriateness and effectiveness of those services.

(1) It is the intent of the Legislature that extending the maximum time available for preparing a written case plan from 30 to 60 days will afford caseworkers time to actively engage families, and to solicit and integrate into the case plan the input of the child and the child's family, as well as the input of relatives and other interested parties.

(2) The extension of the maximum time available for preparing a written case plan from 30 to 60 days shall be effective 90 days after the date that the department gives counties written notice that necessary changes have been made to the Child Welfare Services Case Management System to account for the 60-day timeframe for preparing a written case plan.

(e) The child welfare services case plan shall be comprehensive enough to meet the juvenile court dependency proceedings requirements pursuant to Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2.

(f) The case plan shall be developed as follows:

(1) The case plan shall be based upon an assessment of the circumstances that required child welfare services intervention.

(2) The case plan shall identify specific goals and the appropriateness of the planned services in meeting those goals.

(3) The case plan shall identify the original allegations of abuse or neglect, as defined in Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code, or the conditions cited as the basis for declaring the child a dependent of the court pursuant to Section 300, or all of these, and the other precipitating incidents that led to child welfare services intervention.

(4) The case plan shall include a description of the schedule of the social worker contacts with the child and the family or other caretakers. The frequency of these contacts shall be in accordance with regulations adopted by the State Department of Social Services. If the child has been

placed in foster care out of state, the county social worker or a social worker on the staff of the social services agency in the state in which the child has been placed shall visit the child in a foster family home or the home of a relative at least every 12 months and submit a report to the court on each visit. For children in out-of-state group home facilities, visits shall be conducted at least monthly, pursuant to Section 16516.5. At least once every six months, at the time of a regularly scheduled social worker contact with the foster child, the child's social worker shall inform the child of his or her rights as a foster child, as specified in Section 16001.9. The social worker shall provide the information to the child in a manner appropriate to the age or developmental level of the child.

(5) (A) When out-of-home services are used, the frequency of contact between the natural parents or legal guardians and the child shall be specified in the case plan. The frequency of those contacts shall reflect overall case goals, and consider other principles outlined in this section.

(B) Information regarding any court-ordered visitation between the child and the natural parents or legal guardians, and the terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(6) When out-of-home placement is made, the case plan shall include provisions for the development and maintenance of sibling relationships as specified in subdivisions (b), (c), and (d) of Section 16002. If appropriate, when siblings who are dependents of the juvenile court are not placed together, the social worker for each child, if different, shall communicate with each of the other social workers and ensure that the child's siblings are informed of significant life events that occur within their extended family. Unless it has been determined that it is inappropriate in a particular case to keep siblings informed of significant life events that occur within the extended family, the social worker shall determine the appropriate means and setting for disclosure of this information to the child commensurate with the child's age and emotional well-being. These significant life events shall include, but shall not be limited to, the following:

(A) The death of an immediate relative.

(B) The birth of a sibling.

(C) Significant changes regarding a dependent child, unless the child objects to the sharing of the information with his or her siblings, including changes in placement, major medical or mental health diagnoses, treatments, or hospitalizations, arrests, and changes in the permanent plan.

(7) If out-of-home placement is made in a foster family home, group home or other child care institution that is either a substantial distance

from the home of the child's parent or out of state, the case plan shall specify the reasons why that placement is in the best interest of the child. When an out-of-state group home placement is recommended or made, the case plan shall, in addition, specify compliance with Section 7911.1 of the Family Code.

(8) (A) If out-of-home services are used, or if parental rights have been terminated and the case plan is placement for adoption, the case plan shall include a recommendation regarding the appropriateness of unsupervised visitation between the child and any of the child's siblings. This recommendation shall include a statement regarding the child's and the siblings' willingness to participate in unsupervised visitation. If the case plan includes a recommendation for unsupervised sibling visitation, the plan shall also note that information necessary to accomplish this visitation has been provided to the child or to the child's siblings.

(B) Information regarding the schedule and frequency of the visits between the child and siblings, as well as any court-ordered terms and conditions needed to facilitate the visits while protecting the safety of the child, shall be provided to the child's out-of-home caregiver as soon as possible after the court order is made.

(9) If out-of-home services are used and the goal is reunification, the case plan shall describe the services to be provided to assist in reunification and the services to be provided concurrently to achieve legal permanency if efforts to reunify fail. The plan shall also consider the importance of developing and maintaining sibling relationships pursuant to Section 16002, and the desire and willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful.

(10) If out-of-home services are used, the child has been in care for at least 12 months, and the goal is not adoptive placement, the case plan shall include documentation of the compelling reason or reasons why termination of parental rights is not in the child's best interest. A determination completed or updated within the past 12 months by the department when it is acting as an adoption agency or by a licensed adoption agency that it is unlikely that the child will be adopted, or that one of the conditions described in paragraph (1) of subdivision (c) of Section 366.26 applies, shall be deemed a compelling reason.

(11) (A) Parents and legal guardians shall have an opportunity to review the case plan, and to sign it whenever possible, and then shall receive a copy of the plan. In any voluntary service or placement agreement, the parents or legal guardians shall be required to review and sign the case plan. Whenever possible, parents and legal guardians shall participate in the development of the case plan.

(B) Parents and legal guardians shall be advised that, pursuant to Section 1228.1 of the Evidence Code, neither their signature on the child welfare services case plan nor their acceptance of any services prescribed in the child welfare services case plan shall constitute an admission of guilt or be used as evidence against the parent or legal guardian in a court of law. However, they shall also be advised that the parent's or guardian's failure to cooperate, except for good cause, in the provision of services specified in the child welfare services case plan may be used in any hearing held pursuant to Section 366.21 or 366.22 as evidence.

(12) The case plan shall be included in the court report and shall be considered by the court at the initial hearing and each review hearing. Modifications to the case plan made during the period between review hearings need not be approved by the court if the casework supervisor for that case determines that the modifications further the goals of the plan. If out-of-home services are used with the goal of family reunification, the case plan shall consider and describe the application of subdivision (b) of Section 11203.

(13) If the case plan has as its goal for the child a permanent plan of adoption or placement in another permanent home, it shall include documentation of the steps the agency is taking to find an adoptive family or other permanent living arrangements for the child; to place the child with an adoptive family, an appropriate and willing relative, a legal guardian, or in another planned permanent living arrangement; and to finalize the adoption or legal guardianship. At a minimum, the documentation shall include child specific recruitment efforts, such as the use of state, regional, and national adoption exchanges, including electronic exchange systems, when the child has been freed for adoption.

(14) When appropriate, for a child who is 16 years of age or older, the case plan shall include a written description of the programs and services that will help the child prepare for the transition from foster care to independent living. The case plan shall be developed with the child and individuals identified as important to the child, and shall include steps the agency is taking to ensure that the child has a connection to a caring adult.

(g) If the court finds, after considering the case plan, that unsupervised sibling visitation is appropriate and has been consented to, the court shall order that the child or the child's siblings, the child's current caregiver, and the child's prospective adoptive parents, if applicable, be provided with information necessary to accomplish this visitation. This section does not require or prohibit the social worker's facilitation, transportation, or supervision of visits between the child and his or her siblings.

(h) The case plan documentation on sibling placements required under this section shall not require modification of existing case plan

forms until the Child Welfare Services Case Management System is implemented on a statewide basis.

(i) When a child who is 10 years of age or older has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, the case plan shall include an identification of individuals, other than the child's siblings, who are important to the child and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child. The social worker shall ask every child who is 10 years of age or older who is not placed in a group home to identify any individuals other than the child's siblings who are important to the child, and may ask any child who is younger than 10 years of age to provide that information, as appropriate. The social worker shall make efforts to identify other individuals who are important to the child, consistent with the child's best interests.

(j) The child's caregiver shall be provided a copy of a plan outlining the child's needs and services.

(k) The department, in consultation with the County Welfare Directors Association and other advocates, shall develop standards and guidelines for a model relative placement search and assessment process based on the criteria established in Section 361.3. These guidelines shall be incorporated in the training described in Section 16206. These model standards and guidelines shall be developed by March 1, 1999.

SEC. 5. Section 16506 of the Welfare and Institutions Code is amended to read:

16506. Family maintenance services shall be provided or arranged for by county welfare department staff in order to maintain the child in his or her own home. These services shall be limited to six months, and may be extended in periods of six-month increments if it can be shown that the objectives of the service plan can be achieved within the extended time periods, and provided within the county's allocation. Family maintenance services shall be available without regard to income and shall only be provided to any of the following:

(a) Families whose child or children have been adjudicated a dependent of the court under Section 300, and where the court has ordered the county welfare department to supervise while the child remains in the child's home.

(b) Families whose child is in potential danger of abuse, neglect, or exploitation, who are willing to accept services and participate in corrective efforts, and where it is safe for the child to remain in the child's home only with the provision of services.

(c) Families in which the child is in the care of a previously noncustodial parent, under the supervision of the juvenile court.

(d) Family maintenance services shall be provided to any individual and child who are referred pursuant to Section 11254 and who are not placed in foster care and who meet any of the criteria of subdivision (b) of Section 11254. The services shall be provided until the individual reaches 18 years of age.

CHAPTER 333

An act to amend Section 810 of the Business and Professions Code, relating to health care.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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 549 or 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.

CHAPTER 334

An act to amend Section 17204 of the Probate Code, relating to trusts.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 17204 of the Probate Code is amended to read:

17204. (a) If proceedings involving a trust are pending, a beneficiary of the trust may, in person or by attorney, file with the court clerk where the proceedings are pending a written request stating that the beneficiary desires special notice of the filing of petitions in the proceeding relating to any or all of the purposes described in Section 17200 and giving an address for receiving notice by mail. A copy of the request shall be personally delivered or mailed to the trustee or the trustee's attorney. If personally delivered, the request is effective when it is delivered. If mailed, the request is effective when it is received. When the original of the request is filed with the court clerk, it shall be accompanied by a written admission or proof of service. A request for special notice may be modified or withdrawn in the same manner as provided for the making of the initial request.

(b) (1) An interested person may request special notice in the same manner as a beneficiary under subdivision (a), for the purpose set forth in paragraph (9) of subdivision (b) of Section 17200. The request for special notice shall be accompanied by a verified statement of the person's interest.

(2) For purposes set forth in paragraphs (2), (4) to (6), inclusive, (8), (12), (16), (20), and (21) of subdivision (b) of Section 17200, an interested person may petition the court for an order for special notice of proceedings involving a trust. The petition shall include a verified statement of the creditor's interest and may be served on the trustee or the trustee's attorney by personal delivery or in the manner required by Section 1215. The petition may be made by ex parte application.

(3) For purposes of this subdivision, an ''interested person'' means only a creditor of a trust or, if the trust has become irrevocable upon the death of a trustor, a creditor of the trustor.

(4) This section does not confer standing on an interested person if standing does not otherwise exist.

(c) Except as provided in subdivision (d), after serving and filing a request and proof of service pursuant to subdivision (a) or paragraph (1) of subdivision (b), the beneficiary or the interested person is entitled to notice pursuant to Section 17203. If the petition of an interested person filed pursuant to paragraph (2) of subdivision (b) is granted by the court, the interested person is entitled to notice pursuant to Section 17203.

(d) A request for special notice made by a beneficiary whose right to notice is restricted by Section 15802 is not effective.

CHAPTER 335

An act to amend Section 24045.5 of the Business and Professions Code, relating to alcoholic beverages.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 24045.5 of the Business and Professions Code is amended to read:

24045.5. The department in its discretion may issue a temporary permit to the transferee of any license to continue the operation of the premises during the period a transfer application for the license from person to person at the same premises is pending and when all the following conditions exist:

(a) The premises shall have been operated under a license within 30 days of the date of filing the application for a temporary permit.

(b) The license for the premises shall have been surrendered pursuant to rules of the department.

(c) The applicant for the temporary permit shall have filed with the department an application for transfer of the license at the premises to himself or herself.

(d) The application for the temporary permit shall be accompanied by a temporary permit fee of one hundred dollars ($100).

A temporary permit issued by the department pursuant to this section shall be for a period not to exceed four calendar months. A temporary permit may be extended at the discretion of the department for an additional four calendar months upon payment of an additional fee of one hundred dollars ($100) and upon compliance with all conditions required herein. A temporary permit is a conditional permit and

authorizes the holder thereof to sell the alcoholic beverages as would be permitted to be sold under the privileges of the license for which the transfer application has been filed with the department.

Purchase of beer, wine, and distilled spirits by the holder of a temporary permit shall be made only upon payment before or at the time of delivery in currency or by check. However, the holder of a temporary retail permit who also holds one or more retail licenses and is operating under the retail license or licenses in addition to the temporary permit, and who is not delinquent under the provisions of Section 25509 as to any retail license under which he or she operates, may purchase alcoholic beverages on credit under the temporary permit.

All checks received by a seller for alcoholic beverages purchased by the holder of a temporary retail permit shall be deposited not later than the second business day following the date the alcoholic beverages are delivered.

A check dishonored on presentation shall not be deemed payment. The receipt by the seller or his or her agent in good faith from a holder of a temporary permit of a check dishonored on presentation shall not be cause for disciplinary action against the seller.

Transfer of the license for which the holder of a temporary permit has filed an application shall not be approved by the department until the holder of the temporary permit has filed with the department a statement executed under penalty of perjury that all current obligations have been discharged, and that all outstanding checks issued by him or her in payment for alcoholic beverages will be honored on presentation.

It shall not be a violation of this section or otherwise grounds for disciplinary action for any licensee to extend credit to the holder of a temporary permit or to receive payment from the permittee in a manner other than authorized herein unless the seller had knowledge of the fact that the purchaser was operating under a temporary permit. Knowledge of the fact may be established by evidence, including, but not limited to, evidence that, at the time of receipt of payment or the extension of credit, the premises operated under a temporary permit were posted with the notice required by Section 23985, or the holder of the temporary permit had recorded notice as required by Section 24073, or the holder of the temporary permit had published notice as required by Section 23986, or the holder of the temporary permit had recorded and published notice pursuant to Division 6 (commencing with Section 6101) of the Commercial Code.

Refusal by the department to issue or extend a temporary permit shall not entitle the applicant to petition for the permit pursuant to Section 24011, or to a hearing pursuant to Section 24012. Articles 2 (commencing with Section 23985) and 3 (commencing with Section 24011) shall not apply to temporary permits.

Notwithstanding any other provision of law, a temporary permit may be canceled or suspended summarily at anytime if the department determines that good cause for the cancellation or suspension exists. Chapter 8 (commencing with Section 24300) shall not apply to temporary permits.

Application for a temporary permit shall be on any form the department shall prescribe. If an application for temporary permit is withdrawn before issuance or is refused by the department, the fee which accompanied the application shall be refunded in full, and Section 23959 shall not apply. Fees received by the department for issuance of temporary permits shall be deposited in the Alcohol Beverage Control Fund as provided in Section 25761.

CHAPTER 336

An act to add Section 1810.3 to the Vehicle Code, relating to vehicles, and declaring the urgency thereof to take effect immediately.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1810.3 is added to the Vehicle Code, to read:

1810.3. (a) Using the information made available in the accident reports provided to the department by law enforcement agencies under Section 20012, the department may provide information consisting of the following, for each vehicle that is included in those reports:

(1) The license plate number.

(2) The accident report number.

(b) Notwithstanding Section 16005, 20012, or 20014, or any other provision of law, the department may make the information available to a person who has done both of the following:

(1) Established a commercial requester account under Section 1810.2.

(2) Entered into an agreement described under subdivision (c).

(c) The department shall not provide information under this section unless the person requesting the information has entered into an agreement with the department that includes the following stipulations:

(1) The information provided may not be used for the purpose of identifying or contacting any person or for any other purpose, except as specified in paragraph (2).

(2) The information may be used only to identify a vehicle that has been reported to be in a traffic accident.

(3) The law enforcement agency accident report number and license plate number provided under this section shall be used only for the internal verification purposes of the business that receives the information and may not be disclosed to any party other than the department or the Department of the California Highway Patrol.

(4) The requester agrees to investigate and promptly correct any error that is brought to its attention.

(d) Use of the information provided under this section in violation of paragraph (1), (2), or (3) of subdivision (c) is a violation of Sections 1808.45 and 1808.46.

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.

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

In order that information as to the identity of a vehicle that has been provided to the Department of Motor Vehicles by law enforcement agencies as being involved in a traffic accident may be made available at the earliest possible time, thereby protecting consumers, it is necessary that this act take effect immediately.

CHAPTER 337

An act to amend Section 100425 of, to add Sections 100701, 100702, and 100703 to, to repeal Sections 100710, 100715, 100720, 100730, 100735, 100740, 100745, 100750, 100755, 100760, 100765, and 100770 of, and to repeal and add Section 100700 of, the Health and Safety Code, relating to laboratories.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 100425 of the Health and Safety Code is amended to read:

100425. (a) The fees or charges for the issuance or renewal of any permit, license, registration, or document pursuant to Sections 1639.5, 1676, 1677, 2202, 2805, 11887, 100860, 106700, 106890, 106925, 107080, 107090, 107095, 107160, 110210, 110470, 111130, 111140, 111630, 112405, 112510, 112750, 112755, 113060, 113065, 113845, 114056, 114065, paragraph (2), of subdivision (c) of Section 114090, 114140, subdivision (b) of Section 114290, 114367, 115035, 115065, 115080, 116205, 117923, 117995, 118045, 118210, and 118245 shall be adjusted annually by the percentage change printed in the Budget Act for those items appropriating funds to the state department. After the first annual adjustment of fees or charges pursuant to this section, the fees or charges subject to subsequent adjustment shall be the fees or charges for the prior calendar year. The percentage change shall be determined by the Department of Finance, and shall include at least the total percentage change in salaries and operating expenses of the state department. However, the total increase in amounts collected under this section shall not exceed the total increased cost of the program or service provided.

(b) The state department shall publish annually a list of the actual numerical fee charges for each permit, license, certification, or registration governed by this section. This adjustment of fees and publication of the fee list shall not be subject to the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 2. Section 100700 of the Health and Safety Code is repealed.

SEC. 3. Section 100700 is added to the Health and Safety Code, to read:

100700. (a) Laboratories engaged in the performance of forensic alcohol analysis tests by or for law enforcement agencies on blood, urine, tissue, or breath for the purposes of determining the concentration of ethyl alcohol in persons involved in traffic accidents or in traffic violations shall comply with Group 8 (commencing with Section 1215) of Subchapter 1 of Chapter 2 of Division 1 of Title 17 of the California Code of Regulations, as they exist on December 31, 2004, until the time when those regulations are revised pursuant to Section 100703.

(b) Notwithstanding subdivision (a), the department shall not require laboratories to be licensed.

SEC. 4. Section 100701 is added to the Health and Safety Code, to read:

100701. All laboratories that are subject to the requirements of Section 100700 shall ensure that breath alcohol instruments and

calibrating devices used in testing are listed in the conforming products list in the Federal Register by the National Highway Traffic Safety Administration of the United States Department of Transportation.

SEC. 5. Section 100702 is added to the Health and Safety Code, to read:

100702. (a) All laboratories that are subject to the requirements of Section 100700 shall follow the American Society of Crime Laboratory Directors/Laboratory Accreditation Board (ASCLD/LAB) guidelines for proficiency testing. The required proficiency test must be obtained from any ASCLD/LAB approved test provider.

(b) Each laboratory shall participate annually in an external proficiency test for alcohol analysis.

(c) Each examiner shall successfully complete at least one proficiency test annually.

(d) Each laboratory shall have a procedure in writing that describes a review of proficiency test results, and, if applicable, the corrective action taken when proficiency test results are inconsistent with expected test results.

SEC. 6. Section 100703 is added to the Health and Safety Code, to read:

100703. (a) On or before July 1, 2005, the department shall establish a review committee.

(b) The review committee shall have eight members, including one person representing each of the following:

(1) Prosecuting attorneys.

(2) Law enforcement agencies.

(3) Defense attorneys.

(4) Coroners, pathologists, or medical examiners.

(5) Criminalists.

(6) Toxicologists.

(7) Crime laboratory directors.

(8) The State Department of Health Services.

(c) The review committee shall meet at least once in each five-year period after its initial meeting, or within 60 days of receipt of a request by the department or a member of the review committee.

(d) The review committee shall evaluate Group 8 (commencing with Section 1215) of Subchapter 1 of Chapter 2 of Division 1 of Title 17 of the California Code of Regulations and determine revisions that will limit those regulations to those that the review committee determines are reasonably necessary to ensure the competence of the laboratories and employees to prepare, analyze, and report the results of the tests and comply with applicable laws. The review committee shall submit a summary of revisions to the California Health and Human Services Agency.

(e) Within 90 days of receiving the review committee's revisions, the California Health and Human Services Agency may disapprove of one or more of the revisions.

(f) (1) Except as provided in paragraph (2), the department shall adopt regulations pursuant to this section that shall incorporate the review committee's revisions. Nothing in this section shall be construed as exempting the regulations from the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(2) The department shall not adopt regulations to incorporate any review committee revisions that were disapproved under subdivision (e).

SEC. 7. Section 100710 of the Health and Safety Code is repealed.

SEC. 8. Section 100715 of the Health and Safety Code is repealed.

SEC. 9. Section 100720 of the Health and Safety Code is repealed.

SEC. 10. Section 100730 of the Health and Safety Code is repealed.

SEC. 11. Section 100735 of the Health and Safety Code is repealed.

SEC. 12. Section 100740 of the Health and Safety Code is repealed.

SEC. 13. Section 100745 of the Health and Safety Code is repealed.

SEC. 14. Section 100750 of the Health and Safety Code is repealed.

SEC. 15. Section 100755 of the Health and Safety Code is repealed.

SEC. 16. Section 100760 of the Health and Safety Code is repealed.

SEC. 17. Section 100765 of the Health and Safety Code is repealed.

SEC. 18. Section 100770 of the Health and Safety Code is repealed.

CHAPTER 338

An act to amend Sections 21464 and 42001 of the Vehicle Code, relating to traffic control devices.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 21464 of the Vehicle Code is amended to read:

21464. (a) A person, without lawful authority, may not deface, injure, attach any material or substance to, knock down, or remove, nor may a person shoot at, any official traffic control device, traffic guidepost, traffic signpost, motorist callbox, or historical marker placed or erected as authorized or required by law, nor may a person without lawful authority deface, injure, attach any material or substance to, or

remove, nor may a person shoot at, any inscription, shield, or insignia on any device, guide, or marker.

(b) A person may not use, and a vehicle, other than an authorized emergency vehicle or a public transit passenger vehicle, may not be equipped with, any device, including, but not limited to, a mobile infrared transmitter, that is capable of sending a signal that interrupts or changes the sequence patterns of an official traffic control signal unless that device or use is authorized by the Department of Transportation pursuant to Section 21350 or by local authorities pursuant to Section 21351.

(c) A person may not buy, possess, manufacture, install, sell, offer for sale, or otherwise distribute a device described in subdivision (b), including, but not limited to, a mobile infrared transmitter (MIRT), unless the purchase, possession, manufacture, installation, sale, offer for sale, or distribution is for the use of the device by a peace officer or other person authorized to operate an authorized emergency vehicle or a public transit passenger vehicle, in the scope of his or her duties.

(d) Any willful violation of subdivision (a), (b), or (c) that results in injury to, or the death of, a person is punishable by imprisonment in the state prison, or by imprisonment in a county jail for a period of not more than six months, and by a fine of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

(e) Any willful violation of subdivision (a), (b), or (c) that does not result in injury to, or the death of, a person is punishable by a fine of not more than five thousand dollars ($5,000).

(f) The court shall allow the offender to perform community service designated by the court in lieu of all or part of any fine imposed under this section.

SEC. 2. Section 42001 of the Vehicle Code is amended to read:

42001. (a) Except as provided in subdivision (e) of Section 21464, or 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. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. This act shall become operative only if SB 1085 of the 2003–04 Regular Session is chaptered.

CHAPTER 339

An act to amend Section 724.060 of the Code of Civil Procedure, to amend Sections 4014, 4202, 5002, 17400, 17406, 17432, and 17500 of, and to add Section 5003 to, the Family Code, to amend Section 27282 of the Government Code, to amend Section 19271.6 of the Revenue and Taxation Code, and to amend Section 827 of the Welfare and Institutions Code, relating to family law.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 724.060 of the Code of Civil Procedure is amended to read:

724.060. (a) An acknowledgment of satisfaction of judgment shall contain the following information:

(1) The title of the court.

(2) The cause and number of the action.

(3) The names and addresses of the judgment creditor, the judgment debtor, and the assignee of record if any. If an abstract of the judgment has been recorded in any county, the judgment debtor's name shall appear on the acknowledgment of satisfaction of judgment as it appears on the abstract of judgment.

(4) The date of entry of judgment and of any renewals of the judgment and where entered in the records of the court.

(5) A statement either that the judgment is satisfied in full or that the judgment creditor has accepted payment or performance other than that specified in the judgment in full satisfaction of the judgment.

(6) A statement whether an abstract of the judgment has been recorded in any county and, if so, a statement of each county where the abstract has been recorded and the book and page of the county records where the abstract has been recorded, and a notice that the acknowledgment of satisfaction of judgment (or a court clerk's certificate of satisfaction of judgment) will have to be recorded with the county recorder of each county where the abstract of judgment has been recorded in order to release the judgment lien on real property in that county.

(7) A statement whether a notice of judgment lien has been filed in the office of the Secretary of State and, if such a notice has been filed, a statement of the file number of such notice, and a notice that the acknowledgment of satisfaction of judgment (or a court clerk's certificate of satisfaction of judgment) will have to be filed in that office in order to terminate the judgment lien on personal property.

(b) The acknowledgment of satisfaction of judgment shall be made in the manner of an acknowledgment of a conveyance of real property.

(c) The acknowledgment of satisfaction of judgment shall be executed and acknowledged by one of the following:

(1) The judgment creditor.

(2) The assignee of record.

(3) The attorney for the judgment creditor or assignee of record unless a revocation of the attorney's authority is filed.

(4) The local child support agency director or his or her designee, if the local child support agency has been providing child support services pursuant to Section 17400 of the Family Code. The acknowledgment of satisfaction of judgment may be recorded by the local child support agency pursuant to Section 27282 of the Government Code.

SEC. 2. Section 4014 of the Family Code is amended to read:

4014. (a) Any order for child support issued or modified pursuant to this chapter shall include a provision requiring the obligor and child support obligee to notify the other parent or, if the order requires payment through an agency designated under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651, et seq.), the agency named in the order, of the name and address of his or her current employer.

(b) The requirements set forth in this subdivision apply only in cases in which the local child support agency is not providing child support services pursuant to Section 17400. To the extent required by federal law, and subject to applicable confidentiality provisions of state or federal law, any judgment for paternity and any order for child support entered or modified pursuant to any provision of law shall include a provision requiring the child support obligor and obligee to file with the court all of the following information:

(1) Residential and mailing address.

(2) Social security number.

(3) Telephone number.

(4) Driver's license number.

(5) Name, address, and telephone number of the employer.

(6) Any other information prescribed by the Judicial Council.

The judgment or order shall specify that each parent is responsible for providing his or her own information, that the information must be filed with the court within 10 days of the court order, and that new or different

information must be filed with the court within 10 days after any event causing a change in the previously provided information.

(c) The requirements set forth in this subdivision shall only apply in cases in which the local child support agency is not providing child support services pursuant to Section 17400. Once the child support registry, as described in Section 16576 of the Welfare and Institutions Code is operational, any judgment for paternity and any order for child support entered or modified pursuant to any provision of law shall include a provision requiring the child support obligor and obligee to file and keep updated the information specified in subdivision (b) with the child support registry.

(d) The Judicial Council shall develop forms to implement this section. The forms shall be developed so as not to delay the implementation of the Statewide Child Support Registry described in Section 16576 of the Welfare and Institutions Code and shall be available no later than 30 days prior to the implementation of the Statewide Child Support Registry.

SEC. 3. Section 4202 of the Family Code is amended to read:

4202. (a) Notwithstanding any other provision of law, in a proceeding where the custodial parent resides in one county and the parent ordered to pay support resides in another county, the court may direct payment to be made to the county officer designated by the court for those purposes in the county of residence of the custodial parent, and may direct the local child support agency of either county to enforce the order.

(b) If the court directs the local child support agency of the county of residence of the noncustodial parent to enforce the order, the expenses of the local child support agency with respect to the enforcement is a charge upon the county of residence of the noncustodial parent.

SEC. 4. Section 5002 of the Family Code is amended to read:

5002. (a) In an action pursuant to this chapter prosecuted by the local child support agency or the Attorney General that is initiated by service of summons and petition or other comparable pleading, the respondent may also be served with a proposed judgment consistent with the relief sought in the petition or other comparable pleading. If the respondent's income or income history is unknown to the local child support agency, the local child support agency may serve a form of proposed judgment with the petition and other documents on the respondent that shall inform the respondent that income shall be presumed to be the amount of the minimum wage, at 40 hours per week, established by the Industrial Welfare Commission pursuant to Section 1182.11 of the Labor Code, unless information concerning the respondent's income is provided to the court. The respondent shall also

receive notice that the proposed judgment will become effective if he or she fails to file a response with the court within 30 days after service.

(b) In any action pursuant to this chapter in which the judgment was obtained pursuant to presumed income, as set forth in this section, the court may set aside that part of the judgment or order concerning the amount of child support to be paid on the grounds specified and in the manner set forth in Section 17432.

SEC. 5. Section 5003 is added to the Family Code, to read:

5003. The Judicial Council shall adopt court rules implementing the provisions of subdivision (f) of Section 4930 regarding hearings by telephone, audiovisual means, or other electronic means on or before July 1, 2005. Hearings by telephone, audiovisual means, or other electronic means shall also be permitted in child support cases in which the local child support agency is providing child support services, but both of the parents reside in California, provided that the hearings are conducted in accordance with the rules of court adopted pursuant to this section.

SEC. 6. Section 17400 of the Family Code is amended to read:

17400. (a) Each county shall maintain a local child support agency, as specified in Section 17304, that shall have the responsibility for promptly and effectively establishing, modifying, and enforcing child support obligations, including medical support, enforcing spousal support orders established by a court of competent jurisdiction, and determining paternity in the case of a child born out of wedlock. The local child support agency shall take appropriate action, including criminal action in cooperation with the district attorneys, to establish, modify, and enforce child support and, when appropriate, enforce spousal support orders when the child is receiving public assistance, including Medi-Cal, and, when requested, shall take the same actions on behalf of a child who is not receiving public assistance, including Medi-Cal.

(b) Notwithstanding Sections 25203 and 26529 of the Government Code, attorneys employed within the local child support agency may direct, control, and prosecute civil actions and proceedings in the name of the county in support of child support activities of the Department of Child Support Services and the local child support agency.

(c) Actions brought by the local child support agency to establish paternity or child support or to enforce child support obligations shall be completed within the time limits set forth by federal law. The local child support agency's responsibility applies to spousal support only where the spousal support obligation has been reduced to an order of a court of competent jurisdiction. In any action brought for modification or revocation of an order that is being enforced under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the effective date of the

modification or revocation shall be as prescribed by federal law (42 U.S.C. Sec. 666(a)(9)), or any subsequent date.

(d) (1) The Judicial Council, in consultation with the department and representatives of the California Family Support Council, the Senate Committee on Judiciary, the Assembly Committee on Judiciary, and a legal services organization providing representation on child support matters, shall develop simplified summons, complaint, and answer forms for any action for support brought pursuant to this section or Section 17404. The Judicial Council may combine the summons and complaint in a single form.

(2) The simplified complaint form shall provide notice of the amount of child support that is sought pursuant to the guidelines set forth in Article 2 (commencing with Section 4050) of Chapter 2 of Part 2 of Division 9 based upon the income or income history of the support obligor as known to the local child support agency. If the support obligor's income or income history is unknown to the local child support agency, the complaint shall inform the support obligor that income shall be presumed to be the amount of the minimum wage, at 40 hours per week, established by the Industrial Welfare Commission pursuant to Section 1182.11 of the Labor Code unless information concerning the support obligor's income is provided to the court. The complaint form shall be accompanied by a proposed judgment. The complaint form shall include a notice to the support obligor that the proposed judgment will become effective if he or she fails to file an answer with the court within 30 days of service. Except as provided in paragraph (2) of subdivision (a) of Section 17402, if the proposed judgment is entered by the court, the support order in the proposed judgment shall be effective as of the first day of the month following the filing of the complaint.

(3) (A) The simplified answer form shall be written in simple English and shall permit a defendant to answer and raise defenses by checking applicable boxes. The answer form shall include instructions for completion of the form and instructions for proper filing of the answer.

(B) The answer form shall be accompanied by a blank income and expense declaration or simplified financial statement and instructions on how to complete the financial forms. The answer form shall direct the defendant to file the completed income and expense declaration or simplified financial statement with the answer, but shall state that the answer will be accepted by a court without the income and expense declaration or simplified financial statement.

(C) The clerk of the court shall accept and file answers, income and expense declarations, and simplified financial statements that are completed by hand provided they are legible.

(4) (A) The simplified complaint form prepared pursuant to this subdivision shall be used by the local child support agency or the Attorney General in all cases brought under this section or Section 17404.

(B) The simplified answer form prepared pursuant to this subdivision shall be served on all defendants with the simplified complaint. Failure to serve the simplified answer form on all defendants shall not invalidate any judgment obtained. However, failure to serve the answer form may be used as evidence in any proceeding under Section 17432 of this code or Section 473 of the Code of Civil Procedure.

(C) The Judicial Council shall add language to the governmental summons, for use by the local child support agency with the governmental complaint to establish parental relationship and child support, informing defendants that a blank answer form should have been received with the summons and additional copies may be obtained from either the local child support agency or the superior court clerk.

(e) In any action brought or enforcement proceedings instituted by the local child support agency pursuant to this section for payment of child or spousal support, an action to recover an arrearage in support payments may be maintained by the local child support agency at any time within the period otherwise specified for the enforcement of a support judgment, notwithstanding the fact that the child has attained the age of majority.

(f) The county shall undertake an outreach program to inform the public that the services described in subdivisions (a) to (c), inclusive, are available to persons not receiving public assistance. There shall be prominently displayed in every public area of every office of the agencies established by this section a notice, in clear and simple language prescribed by the Director of Child Support Services, that the services provided in subdivisions (a) to (c), inclusive, are provided to all individuals, whether or not they are recipients of public assistance.

(g) (1) In any action to establish a child support order brought by the local child support agency in the performance of duties under this section, the local child support agency may make a motion for an order effective during the pendency of that action, for the support, maintenance, and education of the child or children that are the subject of the action. This order shall be referred to as an order for temporary support. This order has the same force and effect as a like or similar order under this code.

(2) The local child support agency shall file a motion for an order for temporary support within the following time limits:

(A) If the defendant is the mother, a presumed father under Section 7611, or any father where the child is at least six months old when the

defendant files his or her answer, the time limit is 90 days after the defendant files an answer.

(B) In any other case where the defendant has filed an answer prior to the birth of the child or not more than six months after the birth of the child, then the time limit is nine months after the birth of the child.

(3) If more than one child is the subject of the action, the limitation on reimbursement shall apply only as to those children whose parental relationship and age would bar recovery were a separate action brought for support of that child or those children.

(4) If the local child support agency fails to file a motion for an order for temporary support within time limits specified in this section, the local child support agency shall be barred from obtaining a judgment of reimbursement for any support provided for that child during the period between the date the time limit expired and the motion was filed, or, if no motion is filed, when a final judgment is entered.

(5) Except as provided in Section 17304, nothing in this section prohibits the local child support agency from entering into cooperative arrangements with other county departments as necessary to carry out the responsibilities imposed by this section pursuant to plans of cooperation with the departments approved by the Department of Child Support Services.

(6) Nothing in this section otherwise limits the ability of the local child support agency from securing and enforcing orders for support of a spouse or former spouse as authorized under any other provision of law.

(h) As used in this article, ''enforcing obligations'' includes, but is not limited to, any of the following:

(1) The use of all interception and notification systems operated by the department for the purposes of aiding in the enforcement of support obligations.

(2) The obtaining by the local child support agency of an initial order for child support that may include medical support or that is for medical support only, by civil or criminal process.

(3) The initiation of a motion or order to show cause to increase an existing child support order, and the response to a motion or order to show cause brought by an obligor parent to decrease an existing child support order, or the initiation of a motion or order to show cause to obtain an order for medical support, and the response to a motion or order to show cause brought by an obligor parent to decrease or terminate an existing medical support order, without regard to whether the child is receiving public assistance.

(4) The response to a notice of motion or order to show cause brought by an obligor parent to decrease an existing spousal support order when the child or children are residing with the obligee parent and the local

child support agency is also enforcing a related child support obligation owed to the obligee parent by the same obligor.

(5) The referral of child support delinquencies to the Franchise Tax Board under subdivision (c) of Section 17500 in support of the local child support agency.

(i) As used in this section, ''out of wedlock'' means that the biological parents of the child were not married to each other at the time of the child's conception.

(j) (1) The local child support agency is the public agency responsible for administering wage withholding for current support for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(2) Nothing in this section limits the authority of the local child support agency granted by other sections of this code or otherwise granted by law.

(k) In the exercise of the authority granted under this article, the local child support agency may intervene, pursuant to subdivision (b) of Section 387 of the Code of Civil Procedure, by ex parte application, in any action under this code, or other proceeding in which child support is an issue or a reduction in spousal support is sought. By notice of motion, order to show cause, or responsive pleading served upon all parties to the action, the local child support agency may request any relief that is appropriate that the local child support agency is authorized to seek.

(*l*) The local child support agency shall comply with all regulations and directives established by the department that set time standards for responding to requests for assistance in locating noncustodial parents, establishing paternity, establishing child support awards, and collecting child support payments.

(m) As used in this article, medical support activities that the local child support agency is authorized to perform are limited to the following:

(1) The obtaining and enforcing of court orders for health insurance coverage.

(2) Any other medical support activity mandated by federal law or regulation.

(n) (1) Notwithstanding any other law, venue for an action or proceeding under this division shall be determined as follows:

(A) Venue shall be in the superior court in the county that is currently expending public assistance.

(B) If public assistance is not currently being expended, venue shall be in the superior court in the county where the child who is entitled to current support resides or is domiciled.

(C) If current support is no longer payable through, or enforceable by, the local child support agency, venue shall be in the superior court in the county that last provided public assistance for actions to enforce arrearages assigned pursuant to Section 11477 of the Welfare and Institutions Code.

(D) If subparagraphs (A), (B), and (C) do not apply, venue shall be in the superior court in the county of residence of the support obligee.

(E) If the support obligee does not reside in California, and subparagraphs (A), (B), (C), and (D) do not apply, venue shall be in the superior court of the county of residence of the obligor.

(2) Notwithstanding paragraph (1), if the child becomes a resident of another county after an action under this part has been filed, venue may remain in the county where the action was filed until the action is completed.

(o) The local child support agency of one county may appear on behalf of the local child support agency of any other county in an action or proceeding under this part.

SEC. 7. Section 17406 of the Family Code is amended to read:

17406. (a) In all actions involving paternity or support, including, but not limited to, other proceedings under this code, and under Division 9 (commencing with Section 10000) of the Welfare and Institutions Code, the local child support agency and the Attorney General represent the public interest in establishing, modifying, and enforcing support obligations. No attorney-client relationship shall be deemed to have been created between the local child support agency or Attorney General and any person by virtue of the action of the local child support agency or the Attorney General in carrying out these statutory duties.

(b) Subdivision (a) is declaratory of existing law.

(c) In all requests for services of the local child support agency or Attorney General pursuant to Section 17400 relating to actions involving paternity or support, not later than the same day an individual makes a request for these services in person, and not later than five working days after either (1) a case is referred for services from the county welfare department, (2) receipt of a request by mail for an application for services, or (3) an individual makes a request for services by telephone, the local child support agency or Attorney General shall give notice to the individual requesting services or on whose behalf services have been requested that the local child support agency or Attorney General does not represent the individual or the children who are the subject of the case, that no attorney-client relationship exists between the local child support agency or Attorney General and those persons, and that no such representation or relationship shall arise if the local child support agency or Attorney General provides the services requested. Notice shall be in bold print and in plain English and shall be

translated into the language understandable by the recipient when reasonable. The notice shall include the advice that the absence of an attorney-client relationship means that communications from the recipient are not privileged and that the local child support agency or Attorney General may provide support enforcement services to the other parent in the future.

(d) The local child support agency or Attorney General shall give the notice required pursuant to subdivision (c) to all recipients of services under Section 17400 who have not otherwise been provided that notice, not later than the date of the next annual notice required under Section 11476.2 of the Welfare and Institutions Code. This notice shall include notification to the recipient of services under Section 17400 that the recipient may inspect the clerk's file at the office of the clerk of the court, and that, upon request, the local child support agency, or, if appropriate, the Attorney General, will furnish a copy of the most recent order entered in the case.

(e) The local child support agency or, if appropriate, the Attorney General shall serve a copy of the complaint for paternity or support, or both, on recipients of support services under Section 17400, as specified in paragraph (2) of subdivision (e) of Section 17404. A notice shall accompany the complaint that informs the recipient that the local child support agency or Attorney General may enter into a stipulated order resolving the complaint, and that the recipient shall assist the prosecuting attorney, by sending all information on the noncustodial parent's earnings and assets to the prosecuting attorney.

(f) (1) (A) The local child support agency or Attorney General shall provide written notice to recipients of services under Section 17400 of the initial date and time, and purpose of every hearing in a civil action for paternity or support.

(B) Once the parent who has requested or is receiving support enforcement services becomes a party to the action pursuant to subdivision (e) of Section 17404, in lieu of the above, the local child support agency or Attorney General shall serve on a parent all pleadings relating to paternity or support that have been served on the local child support agency by the other parent. The pleading shall be accompanied by a notice.

(C) The notice provided subject to subparagraphs (A) and (B) shall include the following language:

IMPORTANT NOTICE

It may be important that you attend the hearing. The local child support agency does not represent you or your children. You may have information about the other parent, such as information about

his or her income or assets that will not be presented to the court unless you attend the hearing. You have the right to attend the hearing and to be heard in court and tell the court what you think the court should do with the child support order. This hearing could change your rights or your children's rights to support.

(2) The notice shall state the purpose of the hearing or be attached to the motion or other pleading which caused the hearing to be scheduled.

(3) The notice shall be provided separate from all other material and shall be in at least 14-point type. The failure of the local child support agency or Attorney General to provide the notice required pursuant to subparagraph (A) of paragraph (1) does not affect the validity of any order.

(4) (A) The notice required pursuant to subparagraph (A) of paragraph (1) shall be provided not later than seven calendar days prior to the hearing, or, if the local child support agency or Attorney General receives notice of the hearing less than seven days prior to the hearing, within two days of the receipt by the local child support agency or Attorney General of the notice of the hearing.

(B) Service of the notice and the pleadings required pursuant to subparagraph (B) of paragraph (1) shall be completed not later than five days after receipt of the pleadings served on the local child support agency by the parent.

(5) The local child support agency or Attorney General shall, in order to implement this subdivision, make reasonable efforts to ensure that the local child support agency or Attorney General has current addresses for all parties to the child support action.

(g) The local child support agency or Attorney General shall give notice to recipients of services under Section 17400 of every order obtained by the local child support agency or Attorney General that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, by sending a copy of the order to the recipient. The notice shall be made within the time specified by federal law after the order has been filed. The local child support agency or Attorney General shall also give notice to these recipients of every order obtained in any other jurisdiction that establishes or modifies the support obligation for the recipient or the children who are the subject of the order, and which is received by the local child support agency or Attorney General, by sending a copy of the order to the recipient within the timeframe specified by federal law after the local child support agency or Attorney General has received a copy of the order. In any action enforced under Chapter 6 (commencing with Section 4900) of Part 5 of Division 9, the notice shall be made in compliance with the requirements of that chapter. The failure of the local child support

agency or Attorney General to comply with this subdivision does not affect the validity of any order.

(h) The local child support agency or Attorney General shall give notice to the noncustodial parent against whom a civil action is filed that the local child support agency or Attorney General is not the attorney representing any individual, including, but not limited to, the custodial parent, the child, or the noncustodial parent.

(i) Nothing in this section shall be construed to preclude any person who is receiving services under Section 17400 from filing and prosecuting an independent action to establish, modify, and enforce an order for current support on behalf of himself or herself or a child if that person is not receiving public assistance.

(j) A person who is receiving services under Section 17400 but who is not currently receiving public assistance on his or her own behalf or on behalf of a child shall be asked to execute, or consent to, any stipulation establishing or modifying a support order in any action in which that person is named as a party, before the stipulation is filed. The local child support agency or Attorney General may not submit to the court for approval a stipulation to establish or modify a support order in the action without first obtaining the signatures of all parties to the action, their attorneys of record, or persons authorized to act on their behalf. Any stipulation approved by the court in violation of this subdivision shall be void.

(k) The local child support agency or Attorney General may not enter into a stipulation that reduces the amount of past due support, including interest and penalties accrued pursuant to an order of current support, on behalf of a person who is receiving support enforcement services under Section 17400 and who is owed support arrearages that exceed unreimbursed public assistance paid to the recipient of the support enforcement services, without first obtaining the consent of the person who is receiving services under Section 17400 on his or her own behalf or on behalf of the child.

(*l*) The notices required in this section shall be provided in the following manner:

(1) In all cases in which the person receiving services under Section 17400 resides in California, notice shall be provided by mailing the item by first-class mail to the last known address of, or personally delivering the item to, that person.

(2) In all actions enforced under Chapter 6 (commencing with Section 4900) of Part 5 of Division 9, unless otherwise specified, notice shall be provided by mailing the item by first-class mail to the initiating court.

(m) Notwithstanding any other provision of this section, the notices provided for pursuant to subdivisions (c) to (g), inclusive, are not required in foster care cases.

SEC. 8. Section 17432 of the Family Code is amended to read:

17432. (a) In any action filed by the local child support agency pursuant to Section 17400, 17402, or 17404, the court may, on any terms that may be just, set aside that part of the judgment or order concerning the amount of child support to be paid. This relief may be granted after the six-month time limit of Section 473 of the Code of Civil Procedure has elapsed, based on the grounds, and within the time limits, specified in this section.

(b) This section shall apply only to judgments or orders for support that were based upon presumed income as specified in subdivision (d) of Section 17400 and that were entered after the entry of the default of the defendant under Section 17430. This section shall apply only to the amount of support ordered and not that portion of the judgment or order concerning the determination of parentage.

(c) The court may set aside the child support order contained in a judgment described in subdivision (b) if the defendant's income was substantially different for the period of time during which judgment was effective compared with the income the defendant was presumed to have. A ''substantial difference'' means that amount of income that would result in an order for support that deviates from the order entered by default by 10 percent or more.

(d) Application for relief under this section shall be filed together with an income and expense declaration or simplified financial statement or other information concerning income for any relevant years. The Judicial Council may combine the application for relief under this section and the proposed answer into a single form.

(e) The burden of proving that the actual income of the defendant deviated substantially from the presumed income shall be on the party seeking to set aside the order.

(f) A motion for relief under this section shall be filed within one year of the first collection of money by the local child support agency or the obligee. The one-year time period shall run from the date that the local child support agency receives the first collection.

(g) Within three months from the date the local child support agency receives the first collection for any order established using presumed income, the local child support agency shall check all appropriate sources for income information, and if income information exists, the local child support agency shall make a determination whether the order qualifies for set aside under this section. If the order qualifies for set aside, the local child support agency shall bring a motion for relief under this section.

(h) In all proceedings under this section, before granting relief, the court shall consider the amount of time that has passed since the entry of the order, the circumstances surrounding the defendant's default, the relative hardship on the child or children to whom the duty of support is owed, the caretaker parent, and the defendant, and other equitable factors that the court deems appropriate.

(i) If the court grants the relief requested, the court shall issue a new child support order using the appropriate child support guidelines currently in effect. The new order shall have the same commencement date as the order set aside.

(j) The Judicial Council shall review and modify any relevant forms for purposes of this section. Any modifications to the forms shall be effective July 1, 2005. Prior to the implementation of any modified Judicial Council forms, the local child support agency or custodial parent may file any request to set aside a default judgment under this section using Judicial Council Form FL-680 entitled ''Notice of Motion (Governmental)'' and form FL-684 entitled ''Request for Order and Supporting Declaration (Governmental).''

SEC. 9. Section 17500 of the Family Code is amended to read:

17500. (a) In carrying out its obligations under Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.), the local child support agency shall have the responsibility for promptly and effectively collecting and enforcing child support obligations.

(b) The local child support agency is the public agency responsible for administering wage withholding for the purposes of Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(c) Except as provided in paragraph (3) of subdivision (e) of Section 19271 of the Revenue and Taxation Code, the local child support agency shall refer child support delinquencies to the Franchise Tax Board for collection purposes in the form and manner and at the time prescribed by the Franchise Tax Board. Collection shall be made by the Franchise Tax Board in accordance with Section 19271 of the Revenue and Taxation Code. For purposes of this subdivision, ''child support delinquency'' means an arrearage or otherwise past due amount that accrues when an obligor fails to make any court-ordered support payment when due, which is more than 60 days past due, and the aggregate amount of which exceeds one hundred dollars ($100).

(1) If a child support delinquency exists at the time a case is opened by the local child support agency, the responsibility for the collection of the child support delinquency shall be referred to the Franchise Tax Board no later than 30 days after receipt of the case by the local child support agency.

(2) The referral of child support delinquencies required by this subdivision is for the purposes of supplementing the collection efforts

of the local child support agency and for purposes of efficient and effective child support enforcement and shall not in any manner transfer any responsibilities the local child support agency may have and any responsibilities the Department of Child Support Services may have as the Title IV-D agency.

SEC. 10. Section 27282 of the Government Code is amended to read:

27282. (a) The following documents may be recorded without acknowledgment, certificate of acknowledgment, or further proof:

(1) A judgment affecting the title to or possession of real property, authenticated by the certificate of the clerk of the court in which the judgment was rendered.

(2) A notice of support judgment, an interstate lien, a release of lien, or any other document completed and recorded by a local child support agency or a state agency acting pursuant to Title IV-D of the Social Security Act (42 U.S.C. Sec. 651 et seq.).

(3) A notice of location of mining claim.

(4) Certificates of amounts of taxes, interest and penalties due, notices of state tax liens and extensions thereof executed by the state, county, or city taxing agencies or officials pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, and Sections 2191.3, 2191.4, and 11495 of the Revenue and Taxation Code, and releases, partial releases, and subordinations executed pursuant to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code, and Sections 2191.4, 11496, 14307, and 14308 of the Revenue and Taxation Code.

(5) Notices of lien for postponed property taxes executed pursuant to Section 16182.

(6) A release, discharge, or subordination of a lien for postponed property taxes as authorized by Chapter 6 (commencing with Section 16180) of Part 1 of Division 4 of Title 2.

(7) A fixture filing as defined by paragraph (40) of subdivision (a) of Section 9102 of the Commercial Code.

(8) An order affecting title to or possession of real property issued by a court in an action subject to Section 12527, authenticated by the certificate of the clerk of the court in which the order was issued or a copy of that order authenticated by a declaration under penalty of perjury by the Attorney General or by an assistant or deputy of the Attorney General attesting that the contents of the copy are the same as the original order issued by the court.

(9) A court certified copy of a satisfaction of judgment.

(10) A certificate of correction filed pursuant to Sections 66470 and 66472.1.

(b) Any document described in this section, from the time it is filed with the recorder for record, is constructive notice of the contents thereof to subsequent purchasers and mortgagees.

SEC. 11. Section 19271.6 of the Revenue and Taxation Code is amended to read:

19271.6. (a) The Franchise Tax Board, through a cooperative agreement with the Department of Child Support Services, and in coordination with financial institutions doing business in this state, shall operate a Financial Institution Match System utilizing automated data exchanges to the maximum extent feasible. The Financial Institution Match System shall be implemented pursuant to guidelines prescribed by the Department of Child Support Services and the Franchise Tax Board. These guidelines shall include a structure by which financial institutions, or their designated data-processing agents, shall receive from the Franchise Tax Board the file or files of past-due support obligors compiled in accordance with subdivision (c), that the institution shall match with its own list of accountholders to identify past-due support obligor accountholders at the institution. To the extent allowed by the federal Personal Responsibility and Work Opportunity Reconciliation Act of 1996, the guidelines shall include an option by which financial institutions without the technical ability to process the data exchange, or without the ability to employ a third-party data processor to process the data exchange, may forward to the Franchise Tax Board a list of all accountholders and their social security numbers, so that the Franchise Tax Board shall match that list with the file or files of past-due support obligors compiled in accordance with subdivision (c).

(b) The Financial Institution Match System shall not be subject to any limitation set forth in Chapter 20 (commencing with Section 7460) of Division 7 of Title 1 of the Government Code. However, any use of the information provided pursuant to this section for any purpose other than the enforcement and collection of a child support delinquency, as set forth in Section 19271, shall be a violation of Section 19542.

(c) (1) Each county shall compile a file of support obligors with judgments and orders that are being enforced by local child support agencies pursuant to Section 17400 of the Family Code, and who are past due in the payment of their support obligations. The file shall be compiled, updated, and forwarded to the Franchise Tax Board, in accordance with the guidelines prescribed by the Department of Child Support Services and the Franchise Tax Board.

(2) The Department of Child Support Services, shall compile a file of obligors with support arrearages from requests made by other states for administrative enforcement in interstate cases, in accordance with federal requirements (42 U.S.C. Sec. 666(a)(14)). This file shall be

compiled and forwarded to the Franchise Tax Board in accordance with the guidelines prescribed by the Department of Child Support Services and the Franchise Tax Board. The file shall include, to the extent possible, the obligor's address.

(d) To effectuate the Financial Institution Match System, financial institutions subject to this section shall do all of the following:

(1) Provide to the Franchise Tax Board on a quarterly basis the name, record address and other addresses, social security number or other taxpayer identification number, and other identifying information for each noncustodial parent who maintains an account at the institution and who owes past-due support, as identified by the Franchise Tax Board by name and social security number or other taxpayer identification number.

(2) Except as provided in subdivision (j), in response to a notice or order to withhold issued by the Franchise Tax Board, withhold from any accounts of the obligor the amount of any past-due support stated on the notice or order and transmit the amount to the Franchise Tax Board in accordance with Section 18670 or 18670.5.

(e) Unless otherwise required by applicable law, a financial institution furnishing a report or providing information to the Franchise Tax Board pursuant to this section shall not disclose to a depositor or an accountholder, or a codepositor or coaccountholder, that the name, address, social security number, or other taxpayer identification number or other identifying information of that person has been received from or furnished to the Franchise Tax Board.

(f) A financial institution shall incur no obligation or liability to any person arising from any of the following:

(1) Furnishing information to the Franchise Tax Board as required by this section.

(2) Failing to disclose to a depositor or accountholder that the name, address, social security number, or other taxpayer identification number or other identifying information of that person was included in the data exchange with the Franchise Tax Board required by this section.

(3) Withholding or transmitting any assets in response to a notice or order to withhold issued by the Franchise Tax Board as a result of the data exchange. This paragraph shall not preclude any liability that may result if the financial institution does not comply with subdivision (b) of Section 18674.

(4) Any other action taken in good faith to comply with the requirements of this section.

(g) Information required to be submitted to the Franchise Tax Board pursuant to this section shall only be used by the Franchise Tax Board to collect past-due support pursuant to Section 19271. If the Franchise Tax Board has issued an earnings withholding order and the condition

described in subparagraph (C) of paragraph (1) of subdivision (i) exists with respect to the obligor, the Franchise Tax Board shall not use the information it receives under this section to collect the past-due support from that obligor.

(1) With respect to files compiled under paragraph (1) of subdivision (c), the Franchise Tax Board shall forward to the counties, in accordance with guidelines prescribed by the Department of Child Support Services and the Franchise Tax Board, information obtained from the financial institutions pursuant to this section. No county shall use this information for directly levying on any account. Each county shall keep the information confidential as provided by Section 17212 of the Family Code.

(2) With respect to files compiled under paragraph (2) of subdivision (c), the amount collected by the Franchise Tax Board shall be deposited and distributed to the referring state in accordance with Section 19272.

(h) For those noncustodial parents owing past-due support for which there is a match under paragraph (1) of subdivision (d), the amount past due as indicated on the file or files compiled pursuant to subdivision (c) at the time of the match shall be a delinquency under this article for the purposes of the Franchise Tax Board taking any collection action pursuant to Section 18670 or 18670.5.

(i) A child support delinquency need not be referred to the Franchise Tax Board for collection if a jurisdiction outside this state is enforcing the support order.

(j) (1) Each county shall notify the Franchise Tax Board upon the occurrence of the circumstances described in the following subparagraphs with respect to an obligor of past-due support:

(A) A court has ordered an obligor to make scheduled payments on a child support arrearages obligation and the obligor is in compliance with that order.

(B) An earnings assignment order or an order/notice to withhold income that includes an amount for past-due support has been served on the obligated parent's employer and earnings are being withheld pursuant to the earnings assignment order or an order/notice to withhold income.

(C) At least 50 percent of the obligated parent's earnings are being withheld for support.

(2) Notwithstanding Section 704.070 of the Code of Civil Procedure, if any of the conditions set forth in paragraph (1) exist, the assets of an obligor held by a financial institution are subject to levy as provided by paragraph (2) of subdivision (d). However, the first three thousand five hundred dollars ($3,500) of an obligor's assets are exempt from collection under this subdivision without the obligor having to file a claim of exemption.

(3) If any of the conditions set forth in paragraph (1) exist, an obligor may apply for a claim of exemption pursuant to Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure for an amount that is less than or equal to the total amount levied. The sole basis for a claim of exemption under this subdivision shall be the financial hardship for the obligor and the obligor's dependents.

(4) For the purposes of a claim of exemption made pursuant to paragraph (3), Section 688.030 of the Code of Civil Procedure shall not apply.

(5) For claims of exemption made pursuant to paragraph (3), the local child support agency responsible for enforcement of the obligor's child support order shall be the levying officer for the purpose of compliance with the provisions set forth in Article 2 (commencing with Section 703.510) of Chapter 4 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure except for the release of property required by subdivision (e) of Section 703.580 of the Code of Civil Procedure.

(6) The local child support agency shall notify the Franchise Tax Board within two business days of the receipt of a claim of exemption from an obligor. The Franchise Tax Board shall direct the financial institution subject to the order to withhold to hold any funds subject to the order pending notification by the Franchise Tax Board to remit or release the amounts held.

(7) The superior court in the county in which the local child support agency enforcing the support obligation is located shall have jurisdiction to determine the amount of exemption to be allowed. The court shall consider the needs of the obligor, the obligee, and all persons the obligor is required to support, and all other relevant circumstances in determining whether to allow any exemption pursuant to this subdivision. The court shall give effect to its determination by an order specifying the extent to which the amount levied is exempt.

(8) Within two business days of receipt of an endorsed copy of a court order issued pursuant to subdivision (e) of Section 703.580 of the Code of Civil Procedure, the local child support agency shall provide the Franchise Tax Board with a copy of the order. The Franchise Tax Board shall instruct the financial institution to remit or release the obligor's funds in accordance with the court's order.

(k) For purposes of this section:

(1) ''Account'' means any demand deposit account, share or share draft account, checking or negotiable withdrawal order account, savings account, time deposit account, or a money market mutual fund account, whether or not the account bears interest.

(2) ''Financial institution'' has the same meaning as defined in Section 669A(d)(1) of Title 42 of the United States Code.

(3) ''Past-due support'' means any child support obligation that is unpaid on the due date for payment.

(*l*) Out of any money received from the federal government for the purpose of reimbursing financial institutions for their actual and reasonable costs incurred in complying with this section, the state shall reimburse those institutions. To the extent that money is not provided by the federal government for that purpose, the state shall not reimburse financial institutions for their costs in complying with this section.

SEC. 12. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative

proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services shall not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.

(L) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(M) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(N) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, which pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall

be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (L), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, shall not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction

over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: ''Unlawful Dissemination Of This Information Is A Misdemeanor.'' Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a ''juvenile case file'' means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 13. Section 827 of the Welfare and Institutions Code is amended to read:

827. (a) (1) Except as provided in Section 828, a case file may be inspected only by the following:

(A) Court personnel.

(B) The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law.

(C) The minor who is the subject of the proceeding.

(D) His or her parents or guardian.

(E) The attorneys for the parties, and judges, referees, other hearing officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.

(F) The superintendent or designee of the school district where the minor is enrolled or attending school.

(G) Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.

(H) The State Department of Social Services to carry out its duties pursuant to Division 9 (commencing with Section 10000), and Part 5 (commencing with Section 7900) of Division 12 of the Family Code to oversee and monitor county child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements.

(I) To authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate community care facilities, and to ensure that the standards of care and services provided in those facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facilities are subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 3 (commencing with Section 1500) and Chapter 3.4 (commencing with Section 1596.70) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names that are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and may not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Social Services may not contain the name of the minor.

(J) Members of children's multidisciplinary teams, persons or agencies providing treatment or supervision of the minor.

(K) A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to a case involving the minor pursuant to Article 1 (commencing with Section 3160) of Chapter 11 of Part 2 of Division 8 of the Family Code, a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment pursuant to Section 3111 or 3118 of the Family Code, and counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code. Prior to allowing counsel appointed for the minor in the family law case to inspect the file, the court clerk may require counsel to provide a certified copy of the court order appointing him or her as the minor's counsel.

(L) A court-connected evaluator, court-appointed evaluator, or court-appointed investigator who is actively participating in a guardianship case involving a minor pursuant to Part 2 (commencing with Section 1500) of Division 4 of the Probate Code and acting within the scope of his or her duties in that case.

(M) A local child support agency for the purpose of establishing paternity and establishing and enforcing child support orders.

(N) Juvenile justice commissions as established under Section 225. The confidentiality provisions of Section 10850 shall apply to a juvenile justice commission and its members.

(O) Any other person who may be designated by court order of the judge of the juvenile court upon filing a petition.

(2) Notwithstanding any other law and subject to subparagraph (A) of paragraph (3), juvenile case files, except those relating to matters within the jurisdiction of the court pursuant to Section 601 or 602, that pertain to a deceased child who was within the jurisdiction of the juvenile court pursuant to Section 300, shall be released to the public pursuant to an order by the juvenile court after a petition has been filed and interested parties have been afforded an opportunity to file an objection. Any information relating to another child or which could identify another child, except for information about the deceased, shall be redacted from the juvenile case file prior to release, unless a specific order is made by the juvenile court to the contrary. Except as provided in this paragraph, the presiding judge of the juvenile court may issue an order prohibiting or limiting access to the juvenile case file, or any portion thereof, of a deceased child only upon a showing that release of the juvenile case file or any portion thereof is detrimental to the safety, protection, or physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

(3) Access to juvenile case files pertaining to matters within the jurisdiction of the juvenile court pursuant to Section 300 shall be limited as follows:

(A) If a juvenile case file, or any portion thereof, is privileged or confidential pursuant to any other state law or federal law or regulation, the requirements of that state law or federal law or regulation prohibiting or limiting release of the juvenile case file or any portions thereof shall prevail. Unless a person is listed in subparagraphs (A) to (N), inclusive, of paragraph (1) and is entitled to access under the other state law or federal law or regulation without a court order, all those seeking access, pursuant to other authorization, to portions of, or information relating to the contents of, juvenile case files protected under another state law or federal law or regulation, shall petition the juvenile court. The juvenile court may only release the portion of, or information relating to the contents of, juvenile case files protected by another state law or federal law or regulation if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition. This paragraph shall not be construed to limit the ability of the juvenile court to carry out its duties in conducting juvenile court proceedings.

(B) Prior to the release of the juvenile case file or any portion thereof, the court shall afford due process, including a notice of and an opportunity to file an objection to the release of the record or report to all interested parties.

(4) A juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be disseminated by the receiving agencies to any persons or agencies, other than those persons or agencies authorized to receive documents pursuant to this section. Further, a juvenile case file, any portion thereof, and information relating to the content of the juvenile case file, may not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.

(b) (1) While the Legislature reaffirms its belief that juvenile court records, in general, should be confidential, it is the intent of the Legislature in enacting this subdivision to provide for a limited exception to juvenile court record confidentiality to promote more effective communication among juvenile courts, family courts, law enforcement agencies, and schools to ensure the rehabilitation of juvenile criminal offenders as well as to lessen the potential for drug use, violence, other forms of delinquency, and child abuse.

(2) Notwithstanding subdivision (a), written notice that a minor enrolled in a public school, kindergarten to grade 12, inclusive, has been

found by a court of competent jurisdiction to have committed any felony or any misdemeanor involving curfew, gambling, alcohol, drugs, tobacco products, carrying of weapons, a sex offense listed in Section 290 of the Penal Code, assault or battery, larceny, vandalism, or graffiti shall be provided by the court, within seven days, to the superintendent of the school district of attendance. Written notice shall include only the offense found to have been committed by the minor and the disposition of the minor's case. This notice shall be expeditiously transmitted by the district superintendent to the principal at the school of attendance. The principal shall expeditiously disseminate the information to those counselors directly supervising or reporting on the behavior or progress of the minor. In addition, the principal shall disseminate the information to any teacher or administrator directly supervising or reporting on the behavior or progress of the minor whom the principal believes needs the information to work with the pupil in an appropriate fashion, to avoid being needlessly vulnerable or to protect other persons from needless vulnerability.

Any information received by a teacher, counselor, or administrator under this subdivision shall be received in confidence for the limited purpose of rehabilitating the minor and protecting students and staff, and shall not be further disseminated by the teacher, counselor, or administrator, except insofar as communication with the juvenile, his or her parents or guardians, law enforcement personnel, and the juvenile's probation officer is necessary to effectuate the juvenile's rehabilitation or to protect students and staff.

An intentional violation of the confidentiality provisions of this paragraph is a misdemeanor punishable by a fine not to exceed five hundred dollars ($500).

(3) If a minor is removed from public school as a result of the court's finding described in subdivision (b), the superintendent shall maintain the information in a confidential file and shall defer transmittal of the information received from the court until the minor is returned to public school. If the minor is returned to a school district other than the one from which the minor came, the parole or probation officer having jurisdiction over the minor shall so notify the superintendent of the last district of attendance, who shall transmit the notice received from the court to the superintendent of the new district of attendance.

(c) Each probation report filed with the court concerning a minor whose record is subject to dissemination pursuant to subdivision (b) shall include on the face sheet the school at which the minor is currently enrolled. The county superintendent shall provide the court with a listing of all of the schools within each school district, within the county, along with the name and mailing address of each district superintendent.

(d) Each notice sent by the court pursuant to subdivision (b) shall be stamped with the instruction: ''Unlawful Dissemination Of This Information Is A Misdemeanor.'' Any information received from the court shall be kept in a separate confidential file at the school of attendance and shall be transferred to the minor's subsequent schools of attendance and maintained until the minor graduates from high school, is released from juvenile court jurisdiction, or reaches the age of 18, whichever occurs first. After that time the confidential record shall be destroyed. At any time after the date by which a record required to be destroyed by this section should have been destroyed, the minor or his or her parent or guardian shall have the right to make a written request to the principal of the school that the minor's school records be reviewed to ensure that the record has been destroyed. Upon completion of any requested review and no later than 30 days after the request for the review was received, the principal or his or her designee shall respond in writing to the written request and either shall confirm that the record has been destroyed or, if the record has not been destroyed, shall explain why destruction has not yet occurred.

Except as provided in paragraph (2) of subdivision (b), no liability shall attach to any person who transmits or fails to transmit any notice or information required under subdivision (b).

(e) For purposes of this section, a ''juvenile case file'' means a petition filed in any juvenile court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer in making his or her report, or to the judge, referee, or other hearing officer, and thereafter retained by the probation officer, judge, referee, or other hearing officer.

SEC. 14. Section 13 of this bill incorporates amendments to Section 827 of the Welfare and Institutions Code proposed by both this bill and AB 2228. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 827 of the Welfare and Institutions Code, and (3) this bill is enacted after AB 2228, in which case Section 12 of this bill shall not become operative.

SEC. 15. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

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CHAPTER 340

An act to amend Section 1569.616 of the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1569.616 of the Health and Safety Code is amended to read:

1569.616. (a) (1) An administrator of a residential care facility for the elderly shall be required to successfully complete a department approved certification program prior to employment.

(2) In those cases where the individual is both the licensee and the administrator of a facility, or a licensed nursing home administrator, the individual shall comply with the requirements of this section unless he or she qualifies for one of the exemptions provided for in subdivision (b).

(3) Failure to comply with this section shall constitute cause for revocation of the license of the facility where an individual is functioning as the administrator.

(4) The licensee shall notify the department within 30 days of any change in administrators.

(b) Individuals seeking exemptions under paragraph (2) of subdivision (a) shall meet the following criteria and fulfill the required portions of the certification program, as the case may be:

(1) An individual designated as the administrator of a residential care facility for the elderly who holds a valid license as a nursing home administrator issued in accordance with Chapter 2.35 (commencing with Section 1416) of Division 2 of the Health and Safety Code shall be required to complete the areas in the uniform core of knowledge required by this section that pertain to the law, regulations, policies, and procedural standards that impact the operations of residential care facilities for the elderly, the use, misuse, and interaction of medication commonly used by the elderly in a residential setting, and resident admission, retention, and assessment procedures, equal to 12 hours of classroom instruction. An individual meeting the requirements of this paragraph shall not be required to take a written test.

(2) In those cases where the individual was both the licensee and administrator on or before July 1, 1991, the individual shall be required to complete all the areas specified for the certification program, but shall not be required to take the written test required by this section. Those individuals exempted from the written test shall be issued a conditional

certification that is valid only for the administrator of the facility for which the exemption was granted.

(A) As a condition to becoming an administrator of another facility, the individual shall be required to pass the written test provided for in this section.

(B) As a condition to applying for a new facility license, the individual shall be required to pass the written test provided for in Section 1569.23.

(c) (1) The administrator certification program shall require a minimum of 40 hours of classroom instruction that provides training on a uniform core of knowledge in each of the following areas:

(A) Laws, regulations, and policies and procedural standards that impact the operations of residential care facilities for the elderly.

(B) Business operations.

(C) Management and supervision of staff.

(D) Psychosocial needs of the elderly.

(E) Community and support services.

(F) Physical needs for elderly persons.

(G) Use, misuse, and interaction of medication commonly used by the elderly.

(H) Resident admission, retention, and assessment procedures.

(I) Training focused specifically on serving clients with dementia. This training shall be for at least four hours.

(2) Individuals applying for certification under this section shall successfully complete an approved certification program, pass a written test administered by the department within 60 days of completing the program, and submit the documentation required by subdivision (d) to the department within 30 days of being notified of having passed the test. The department may extend these time deadlines for good cause. The department shall notify the applicant of his or her test results within 30 days of administering the test.

(d) The department shall not begin the process of issuing a certificate until receipt of all of the following:

(1) A certificate of completion of the administrator training required pursuant to this chapter.

(2) The fee required for issuance of the certificate. A fee of one hundred dollars ($100) shall be charged by the department to cover the costs of processing the application for certification.

(3) Documentation of passing the written test or of qualifying for an exemption pursuant to subdivision (b).

(4) Submission of fingerprints. The department and the Department of Justice shall expedite the criminal record clearance for holders of certificates of completion. The department may waive the submission for those persons who have a current criminal record clearance on file.

(e) It shall be unlawful for any person not certified under this section to hold himself or herself out as a certified administrator of a residential care facility for the elderly. Any person willfully making any false representation as being a certified administrator is guilty of a misdemeanor.

(f) (1) Certificates issued under this section shall be renewed every two years and renewal shall be conditional upon the certificate holder submitting documentation of completion of 40 hours of continuing education related to the core of knowledge specified in paragraph (1) of subdivision (c). No more than one-half of the required 40 hours of continuing education necessary to renew the certificate may be satisfied through online courses. For purposes of this section, individuals who hold a valid license as a nursing home administrator issued in accordance with Chapter 2.35 (commencing with Section 1416) of Division 2 of the Health and Safety Code and meet the requirements of paragraph (1) of subdivision (b) shall only be required to complete 20 hours of continuing education.

(2) Every certified administrator of a residential care facility for the elderly is required to renew his or her certificate and shall complete the continuing education requirements of this subdivision whether he or she is certified according to subdivision (a) or (b). At least eight hours of the 40-hour continuing education requirement for a certified administrator of a residential care facility for the elderly shall include instruction on serving clients with dementia, including, but not limited to, instruction related to direct care, physical environment, and admissions procedures and assessment.

(3) Certificates issued under this section shall expire every two years, on the anniversary date of the initial issuance of the certificate, except that any administrator receiving his or her initial certification on or after January 1, 1999, shall make an irrevocable election to have his or her recertification date for any subsequent recertification either on the date two years from the date of issuance of the certificate or on the individual's birthday during the second calendar year following certification. The department shall send a renewal notice to the certificate holder 90 days prior to the expiration date of the certificate. If the certificate is not renewed prior to its expiration date, reinstatement shall only be permitted after the certificate holder has paid a delinquency fee equal to three times the renewal fee and has provided evidence of completion of the continuing education required.

(4) To renew a certificate, the certificate holder shall, on or before the certificate expiration date, request renewal by submitting to the department documentation of completion of the required continuing education courses and pay the renewal fee of one hundred dollars ($100), irrespective of receipt of the department's notification of the renewal. A

renewal request postmarked on or before the expiration of the certificate is proof of compliance with this paragraph.

(5) A suspended or revoked certificate is subject to expiration as provided for in this section. If reinstatement of the certificate is approved by the department, the certificate holder, as a condition precedent to reinstatement, shall pay a fee in an amount equal to the renewal fee, plus the delinquency fee, if any, accrued at the time of its revocation or suspension.

(6) A certificate that is not renewed within four years after its expiration shall not be renewed, restored, reissued, or reinstated except upon completion of a certification program, passing any test that may be required of an applicant for a new certificate at that time, and paying the appropriate fees provided for in this section.

(7) A fee of twenty-five dollars ($25) shall be charged for the reissuance of a lost certificate.

(8) A certificate holder shall inform the department of his or her employment status within 30 days of any change.

(g) The department may revoke a certificate issued under this section for any of the following:

(1) Procuring a certificate by fraud or misrepresentation.

(2) Knowingly making or giving any false statement or information in conjunction with the application for issuance of a certificate.

(3) Criminal conviction unless an exemption is granted pursuant to Section 1569.17.

(h) The certificate shall be considered forfeited under either of the following conditions:

(1) The administrator has had a license revoked, suspended, or denied as authorized under Section 1569.50.

(2) The administrator has been denied employment, residence, or presence in a facility based on action resulting from an administrative hearing pursuant to Section 1569.58.

(i) (1) The department shall establish, by regulation, the program content, the testing instrument, the process for approving certification programs, and criteria to be used in authorizing individuals, organizations, or educational institutions to conduct certification programs and continuing education courses. These regulations shall be developed in consultation with provider and consumer organizations, and shall be made available at least six months prior to the deadline required for certification. The department may deny vendor approval to any agency or person that has not provided satisfactory evidence of their ability to meet the requirements of vendorization set out in the regulations adopted pursuant to subdivision (j).

(2) (A) A vendor of online programs for continuing education shall ensure that each online course contains all of the following:

(i) An interactive portion where the participant receives feedback, through online communication, based on input from the participant.

(ii) Required use of a personal identification number or personal identification information to confirm the identity of the participant.

(iii) A final screen displaying a printable statement, to be signed by the participant, certifying that the identified participant completed the course. The vendor shall obtain a copy of the final screen statement with the original signature of the participant prior to the issuance of a certificate of completion. The signed statement of completion shall be maintained by the vendor for a period of three years and be available to the department upon demand. Any person who certifies as true any material matter pursuant to this section that he or she knows to be false is guilty of a misdemeanor.

(B) Nothing in this subdivision shall prohibit the department from approving online programs for continuing education that do not meet the requirements of subparagraph (A) if the vendor demonstrates to the department's satisfaction that, through advanced technology, the course and the course delivery meet the requirements of this section.

(3) The department may authorize vendors to conduct the administrator certification training program pursuant to provisions set forth in this section. The department shall conduct the written test pursuant to regulations adopted by the department.

(4) The department shall prepare and maintain an updated list of approved training vendors.

(5) The department may inspect training programs, continuing education courses, and online courses, at no charge to the department, in order to determine if content and teaching methods comply with paragraphs (1) and (2), if applicable, and with regulations. If the department determines that any vendor is not complying with the intent of this section, the department shall take appropriate action to bring the program into compliance, which may include removing the vendor from the approved list.

(6) The department shall establish reasonable procedures and timeframes, not to exceed 30 days, for the approval of vendor training programs.

(7) The department may charge a reasonable fee, not to exceed one hundred fifty dollars ($150) every two years, to certification program vendors for review and approval of the initial 40-hour training program pursuant to subdivision (c). The department may also charge the vendor a fee, not to exceed one hundred dollars ($100) every two years, for the review and approval of the continuing education courses needed for recertification pursuant to this subdivision.

(j) This section shall be operative upon regulations being adopted by the department to implement the administrator certification program as provided for in this section.

(k) The department shall establish a registry for holders of certificates that shall include, at a minimum, information on employment status and criminal record clearance.

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 341

An act to amend Section 4505 of, and to repeal Section 4704 of, the Food and Agricultural Code, relating to fairs.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 4505 of the Food and Agricultural Code is amended to read:

4505. Every fair within the network of California fairs that conducts a fair for which any apportionment is sought shall file a detailed statement of its operations in the previous fiscal year with the department within 90 days of the end of that fiscal year. The content and form of the statement shall be prescribed by the department.

SEC. 2. Section 4704 of the Food and Agricultural Code is repealed.

CHAPTER 342

An act to amend Section 4008 of, and to add Section 4119.1 to, the Business and Professions Code, and to amend Sections 1261.5 and 1261.6 of the Health and Safety Code, relating to health facilities.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. 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.

(f) A pharmacy inspector employed by the board may enter a facility licensed pursuant to subdivision (c) or (d) of Section 1250 of the Health and Safety Code to inspect an automated drug delivery system operated pursuant to Section 4119 or 4119.1.

SEC. 2. Section 4119.1 is added to the Business and Professions Code, to read:

4119.1. (a) A pharmacy may provide pharmacy services to a health facility licensed pursuant to subdivision (c), (d), or both, of Section 1250 of the Health and Safety Code, through the use of an automated drug delivery system that need not be located at the same location as the pharmacy.

(b) Drugs stored in an automated drug delivery system shall be part of the inventory of the pharmacy providing pharmacy services to that facility, and drugs dispensed from the pharmacy system shall be considered to have been dispensed by that pharmacy.

(c) (1) The pharmacy shall maintain records of the acquisition and disposition of dangerous drugs and dangerous devices stored in the automated drug delivery system separate from other pharmacy records.

(2) The pharmacy shall own and operate the automated drug delivery system.

(3) The pharmacy shall provide training regarding the operation and use of the automated drug delivery system to both pharmacy and health facility personnel using the system.

(4) The pharmacy shall operate the automated drug delivery system in compliance with Section 1261.6 of the Health and Safety Code.

(d) The operation of the automated drug delivery system shall be under the supervision of a licensed pharmacist. To qualify as a supervisor for an automated drug delivery system, the pharmacist need not be physically present at the site of the automated drug delivery system and may supervise the system electronically.

(e) Nothing in this section shall be construed to revise or limit the use of automated drug delivery systems as permitted by the board in any licensed health facility other than a facility defined in subdivision (c) or (d), or both, of Section 1250 of the Health and Safety Code.

SEC. 3. Section 1261.5 of the Health and Safety Code is amended to read:

1261.5. (a) The number of oral dosage form or suppository form drugs provided by a pharmacy to a health facility licensed pursuant to subdivision (c) or (d), or both (c) and (d), of Section 1250 for storage in a secured emergency supplies container, pursuant to Section 4119 of the Business and Professions Code, shall be limited to 24. The State Department of Health Services may limit the number of doses of each drug available to not more than four doses of any separate drug dosage form in each emergency supply.

(b) Any limitations established pursuant to subdivision (a) on the number and quantity of oral dosage or suppository form drugs provided by a pharmacy to a health facility licensed pursuant to subdivision (c), (d), or both (c) and (d), of Section 1250 for storage in a secured emergency supplies container shall not apply to an automated drug delivery system, as defined in Section 1261.6, when a pharmacist controls access to the drugs.

SEC. 4. Section 1261.6 of the Health and Safety Code is amended to read:

1261.6. (a) (1) For purposes of this section and Section 1261.5, an ''automated drug delivery system'' means a mechanical system that performs operations or activities, other than compounding or administration, relative to the storage, dispensing, or distribution of drugs. An automated drug delivery system shall collect, control, and maintain all transaction information to accurately track the movement of drugs into and out of the system for security, accuracy, and accountability.

(2) For purposes of this section, ''facility'' means a health facility licensed pursuant to subdivision (c), (d), or both, of Section 1250 that has an automated drug delivery system provided by a pharmacy.

(b) Transaction information shall be made readily available in a written format for review and inspection by individuals authorized by law. These records shall be maintained in the facility for a minimum of three years.

(c) Individualized and specific access to automated drug delivery systems shall be limited to facility and contract personnel authorized by law to administer drugs.

(d) (1) The facility and the pharmacy shall develop and implement written policies and procedures to ensure safety, accuracy, accountability, security, patient confidentiality, and maintenance of the quality, potency, and purity of stored drugs. Policies and procedures shall define access to the automated drug delivery system and limits to access to equipment and drugs.

(2) All policies and procedures shall be maintained at the pharmacy operating the automated drug delivery system and the location where the automated drug delivery system is being used.

(e) When used as an emergency pharmaceutical supplies container, drugs removed from the automated drug delivery system shall be limited to the following:

(1) A new drug order given by a prescriber for a patient of the facility for administration prior to the next scheduled delivery from the pharmacy, or 72 hours, whichever is less. The drugs shall be retrieved only upon authorization by a pharmacist and after the pharmacist has

reviewed the prescriber's order and the patient's profile for potential contraindications and adverse drug reactions.

(2) Drugs that a prescriber has ordered for a patient on an as-needed basis, if the utilization and retrieval of those drugs are subject to ongoing review by a pharmacist.

(3) Drugs designed by the patient care policy committee or pharmaceutical service committee of the facility as emergency drugs or acute onset drugs. These drugs may be retrieved from an automated drug delivery system pursuant to the order of a prescriber for emergency or immediate administration to a patient of the facility. Within 48 hours after retrieval under this paragraph, the case shall be reviewed by a pharmacist.

(f) When used to provide pharmacy services pursuant to Section 4119.1 of the Business and Professions Code, the automated drug delivery system shall be subject to all of the following requirements:

(1) Drugs removed from the automated drug delivery system for administration to a patient shall be in properly labeled units of administration containers or packages.

(2) A pharmacist shall review and approve all orders prior to a drug being removed from the automated drug delivery system for administration to a patient.

(3) The pharmacy providing services to the facility pursuant to Section 4119.1 of the Business and Professions Code shall control access to the drugs stored in the automated drug delivery system.

(4) Access to the automated drug delivery system shall be controlled and tracked using an identification or password system or biosensor.

(5) The automated drug delivery system shall make a complete and accurate record of all users accessing the system and all drugs removed from the system.

(6) When a pharmacist releases drugs for removal from the automated drug delivery system pursuant to paragraph (2), the automated drug delivery system shall not provide facility staff with access to drugs different from those released.

(g) The stocking of an automated drug delivery system shall be performed by a pharmacist. If the automated drug delivery system utilizes removable pockets or drawers, or similar technology, the stocking system may be done outside of the facility and be delivered to the facility if all of the following conditions are met:

(1) The task of placing drugs into the removable pockets or drawers is performed by a pharmacist or by an intern pharmacist or a pharmacy technician working under the direct supervision of a pharmacist.

(2) The removable pockets or drawers are transported between the pharmacy and the facility in a secure tamper-evident container.

(3) The facility, in conjunction with the pharmacy, has developed policies and procedures to ensure that the pockets or drawers are properly placed into the automated drug delivery system.

(h) Review of the drugs contained within, and the operation and maintenance of, the automated drug delivery system shall be done in accordance with law and shall be the responsibility of the pharmacy. The review shall be conducted on a monthly basis by a pharmacist and shall include a physical inspection of the drugs in the automated drug delivery system, an inspection of the automated drug delivery system machine for cleanliness, and a review of all transaction records in order to verify the security and accountability of the system.

(i) Drugs dispensed from an automated drug delivery system that meets the requirements of this section shall not be subject to the labeling requirements of Section 4076 of the Business and Professions Code or Section 111480 of this code if the drugs to be placed into the automated drug delivery system are in unit dose packaging or unit of use and if the information required by Section 4076 of the Business and Professions Code and Section 111480 of this code is readily available at the time of drug administration.

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 343

An act to amend Section 44259 of the Education Code, relating to teachers, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 44259 of the Education Code is amended to read:

44259. (a) Except as provided in subparagraphs (A) and (C) of paragraph (3) of subdivision (b), each program of professional preparation for multiple or single subject teaching credentials shall not

include more than one year of, or the equivalent of one-fifth of a five-year program in, professional preparation.

(b) The minimum requirements for the preliminary multiple or single subject teaching credential are all of the following:

(1) A baccalaureate degree or higher degree from a regionally accredited institution of postsecondary education. Except as provided in subdivision (c) of Section 44227, the baccalaureate degree shall not be in professional education. The commission shall encourage accredited institutions to offer undergraduate minors in education and special education to students who intend to become teachers.

(2) Passage of the state basic skills examination that is developed and administered by the commission pursuant to Section 44252.5.

(3) Satisfactory completion of a program of professional preparation that has been accredited by the committee on accreditation on the basis of standards of program quality and effectiveness that have been adopted by the commission. Subject to the availability of funds in the annual Budget Act for this purpose, and in accordance with the commission's assessment and performance standards, each program shall include a teaching performance assessment as set forth in Section 44320.2 which is aligned with the California Standards for the Teaching Profession. The commission shall ensure that each candidate recommended for a credential or certificate has demonstrated satisfactory ability to assist pupils to meet or exceed state content and performance standards for pupils adopted pursuant to subdivision (a) of Section 60605. Programs that meet this requirement for professional preparation shall include any of the following:

(A) Integrated programs of subject matter preparation and professional preparation pursuant to subdivision (a) of Section 44259.1.

(B) Postbaccalaureate programs of professional preparation, pursuant to subdivision (b) of Section 44259.1.

(C) Internship programs of professional preparation, pursuant to Section 44321, Article 7.5 (commencing with Section 44325), Article 11 (commencing with Section 44380), and Article 3 (commencing with Section 44450) of Chapter 3.

(4) Study of alternative methods of developing English language skills, including the study of reading as described in subparagraphs (A) and (B), among all pupils, including those for whom English is a second language, in accordance with the commission's standards of program quality and effectiveness. The study of reading shall meet the following requirements:

(A) Commencing January 1, 1997, satisfactory completion of comprehensive reading instruction that is research-based and includes all of the following:

(i) The study of organized, systematic, explicit skills including phonemic awareness, direct, systematic, explicit phonics, and decoding skills.

(ii) A strong literature, language, and comprehension component with a balance of oral and written language.

(iii) Ongoing diagnostic techniques that inform teaching and assessment.

(iv) Early intervention techniques.

(v) Guided practice in a clinical setting.

(B) For the purposes of this section, ''direct, systematic, explicit phonics'' means phonemic awareness, spelling patterns, the direct instruction of sound/symbol codes and practice in connected text and the relationship of direct, systematic, explicit phonics to the components set forth in clauses (i) to (v), inclusive.

A program for the multiple subjects credential also shall include the study of integrated methods of teaching language arts.

(5) Completion of a subject matter program that has been approved by the commission on the basis of standards of program quality and effectiveness pursuant to Article 6 (commencing with Section 44310) or passage of a subject matter examination pursuant to Article 5 (commencing with Section 44280). The commission shall ensure that subject matter standards and examinations are aligned with the state content and performance standards for pupils adopted pursuant to subdivision (a) of Section 60605.

(6) Demonstration of a knowledge of the principles and provisions of the Constitution of the United States pursuant to Section 44335.

(7) Commencing January 1, 2000, demonstration, in accordance with the commission's standards of program quality and effectiveness, of basic competency in the use of computers in the classroom as determined by one of the following:

(A) Successful completion of a commission-approved program or course.

(B) Successful passage of an assessment that is developed, approved, and administered by the commission.

(c) The minimum requirements for the professional clear multiple or single subject teaching credential shall include all of the following requirements:

(1) Possession of a valid preliminary teaching credential, as prescribed in subdivision (b), possession of a valid equivalent credential or certificate, or completion of equivalent requirements as determined by the commission.

(2) Subject to the availability of funds in the annual Budget Act to provide statewide access to eligible beginning teachers, as defined in subdivision (d) of Section 44279.1 and except as provided in paragraph

(3), completion of a program of beginning teacher induction, including one of the following:

(A) A program of beginning teacher support and assessment approved by the commission and the Superintendent of Public Instruction pursuant to Section 44279.1, a provision of the Marian Bergeson Beginning Teacher Support and Assessment System.

(B) An alternative program of beginning teacher induction that is provided by one or more local educational agencies and has been approved by the commission and the superintendent on the basis of initial review and periodic evaluations of the program in relation to appropriate standards of credential program quality and effectiveness that have been adopted by the commission, the superintendent, and the State Board of Education pursuant to this subdivision. The standards for alternative programs shall encourage innovation and experimentation in the continuous preparation and induction of beginning teachers. Any alternative program of beginning teacher induction that has met state standards pursuant to this subdivision may apply for state funding pursuant to Sections 44279.1 and 44279.2.

(C) An alternative program of beginning teacher induction that is sponsored by a regionally accredited college or university, in cooperation with one or more local school districts, that addresses the individual professional needs of beginning teachers and meets the commission's standards of induction. The commission shall ensure that preparation and induction programs that qualify candidates for professional credentials extend and refine each beginning teacher's professional skills in relation to the California Standards for the Teaching Profession and the standards of pupil performance adopted pursuant to Section 60605.

(3) (A) If a candidate satisfies the requirements of subdivision (b), including completion of an accredited internship program of professional preparation, and if that internship program fulfills induction standards and is approved as set forth in this subdivision, the commission shall determine that the candidate has fulfilled the requirements of paragraph (2).

(B) If an approved induction program is verified as unavailable to a beginning teacher, or if the beginning teacher is required under the federal No Child Left Behind Act of 2001 (20 U.S.C. Sec. 6301 et seq.) to complete subject matter coursework to be qualified for a teaching assignment, the commission shall accept completion of an approved fifth-year program after completion of a baccalaureate degree at a regionally accredited institution as fulfilling the requirements of paragraph (2). The commission shall adopt regulations to implement this subparagraph.

(4) Preparation, in accordance with commission standards, that addresses the following:

(A) Study of health education, including study of nutrition, cardiopulmonary resuscitation, and the physiological and sociological effects of abuse of alcohol, narcotics, and drugs and the use of tobacco. Training in cardiopulmonary resuscitation shall also meet the standards established by the American Heart Association or the American Red Cross.

(B) Study and field experience in methods of delivering appropriate educational services to pupils with exceptional needs in regular education programs.

(C) Study, in accordance with the commission's standards of program quality and effectiveness, of advanced computer-based technology, including the uses of technology in educational settings.

(d) The commission shall develop and implement standards of program quality and effectiveness that provide for the areas of study listed in subparagraphs (A) to (C), inclusive, of paragraph (4) of subdivision (c), starting in professional preparation and continuing through induction.

(e) A credential that was issued prior to January 1, 1993, shall remain in force as long as it is valid under the laws and regulations that were in effect on the date it was issued. The commission may not, by regulation, invalidate an otherwise valid credential unless it issues to the holder of the credential, in substitution, a new credential authorized by another provision in this chapter that is no more restrictive than the credential for which it was substituted with respect to the kind of service authorized and the grades, classes, or types of schools in which it authorizes service.

(f) A credential program that is approved by the commission may not deny an individual access to that program solely on the grounds that the individual obtained a teaching credential through completion of an internship program when that internship program has been accredited by the commission.

(g) Notwithstanding this section, persons who were performing teaching services as of January 1, 1999, pursuant to the language of this section that was in effect prior to that date, may continue to perform those services without complying with any requirements that may be added by the amendments adding this subdivision.

(h) Subparagraphs (A) and (B) of paragraph (4) of subdivision (b) do not apply to any person who, as of January 1, 1997, holds a multiple or single subject teaching credential, or to any person enrolled in a program of professional preparation for a multiple or single subject teaching credential as of January 1, 1997, who subsequently completes that program. It is the intent of the Legislature that the requirements of subparagraphs (A) and (B) of paragraph (4) of subdivision (b) be applied

only to persons who enter a program of professional preparation on or after January 1, 1997.

(i) The commission shall grant teaching credentials based on the requirements for those credentials that were in effect on December 31, 1998, to candidates who were in the process of meeting those requirements for teaching credentials before the effective date of the commission's implementation of this section.

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 expedite the credentialing process as it relates to the induction program requirements, it is necessary that this act take effect immediately.

CHAPTER 344

An act to amend Section 2835.5 of the Business and Professions Code, relating to nursing.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 2835.5 of the Business and Professions Code is amended to read:

2835.5. (a) A registered nurse who is holding himself or herself out as a nurse practitioner or who desires to hold himself or herself out as a nurse practitioner shall, within the time prescribed by the board and prior to his or her next license renewal or the issuance of an initial license, submit educational, experience, and other credentials and information as the board may require for it to determine that the person qualifies to use the title ''nurse practitioner,'' pursuant to the standards and qualifications established by the board.

(b) Upon finding that a person is qualified to hold himself or herself out as a nurse practitioner, the board shall appropriately indicate on the license issued or renewed, that the person is qualified to use the title ''nurse practitioner.'' The board shall also issue to each qualified person a certificate evidencing that the person is qualified to use the title ''nurse practitioner.''

(c) A person who has been found to be qualified by the board to use the title ''nurse practitioner'' prior to the effective date of this section,

shall not be required to submit any further qualifications or information to the board and shall be deemed to have met the requirements of this section.

(d) On and after January 1, 2008, an applicant for initial qualification or certification as a nurse practitioner under this article who has not been qualified or certified as a nurse practitioner in California or any other state shall meet the following requirements:

(1) Hold a valid and active registered nursing license issued under this chapter.

(2) Possess a master's degree in nursing, a master's degree in a clinical field related to nursing, or a graduate degree in nursing.

(3) Satisfactorily complete a nurse practitioner program approved by the board.

CHAPTER 345

An act to amend Section 24013 of, and to repeal and add Section 24015 of, the Business and Professions Code, relating to alcoholic beverage control.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 24013 of the Business and Professions Code is amended to read:

24013. (a) Protests may be filed at any office of the department at any time within 30 days from the first date of posting the notice of intention to engage in the sale of alcoholic beverages at the premises, or within 30 days of the mailing of the notification pursuant to Section 23985.5, whichever is later.

(b) The department may reject protests, except protests made by a public agency or public official or protests made by the governing body of a city or county, if it determines the protests are false, vexatious, frivolous, or without reasonable or probable cause at any time before hearing thereon, notwithstanding Section 24016 or 24300. If, after investigation, the department recommends that a license be issued notwithstanding a protest by a public agency, a public official, or the governing body of a city or county, the department shall notify the agency, official, or governing body in writing of its determination and the reasons therefor, in conjunction with the notice of hearing provided to the protestant pursuant to Section 11509 of the Government Code. If

the department rejects a protest as provided in this section and issues a license, a protestant whose protest has been rejected may, within 10 days after the issuance of the license, file an accusation with the department alleging the grounds of protest as a cause for revocation of the license and the department shall hold a hearing as provided in Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Nothing in this section shall be construed as prohibiting or restricting any right that the individual making the protest might have to a judicial proceeding.

SEC. 2. Section 24015 of the Business and Professions Code is repealed.

SEC. 2. Section 24015 is added to the Business and Professions Code, to read:

24015. (a) If, after investigation, the department recommends that a license be issued, with or without conditions, notwithstanding that one or more protests have been accepted by the department, the department shall notify the applicant and all protesting parties whose protests have been accepted in writing of its determination.

(b) Any person who has filed a verified protest in a timely fashion pursuant to subdivision (a) of Section 24013, that has been accepted pursuant to this article may request that the department conduct a hearing on the issue or issues raised in the protest. The request shall be in writing and shall be filed with the department within 15 business days of the date the department notifies the protesting party of its determination as required under subdivision (a).

(c) At any time prior to the issuance of the license, the department may, in its discretion, accept a late request for a hearing upon a showing of good cause. Any determination of the department pursuant to this subdivision shall not be an issue at the hearing nor grounds for appeal or review.

(d) If a request for a hearing is filed with the department pursuant to subdivision (b), the department shall schedule a hearing on the protest. The issues to be determined at the hearing shall be limited to those issues raised in the protest or protests of the person or persons requesting the hearing.

(e) Notwithstanding that a hearing is held pursuant to subdivision (d), the protest or protests of any person or persons who did not request a hearing as authorized in this section shall be deemed withdrawn.

(f) If no request for a hearing is filed with the department pursuant to this section, any protest or protests shall be deemed withdrawn and the department may issue the license without any further proceeding.

(g) If the person filing the request for a hearing fails to appear at the hearing, the protest shall be deemed withdrawn.

CHAPTER 346

An act to amend Sections 1357.120 and 1373 of, and to add Section 1378 to, the Civil Code, relating to common interest developments.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1357.120 of the Civil Code is amended to read:

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.

(6) Any procedures for reviewing and approving or disapproving a proposed physical change to a member's separate interest or to the common area.

(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.

SEC. 1.5. Section 1357.120 of the Civil Code is amended to read:

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 disputes.

(6) Any procedures for reviewing and approving or disapproving a proposed physical change to a member's separate interest or to the common area.

(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.

SEC. 2. 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 a declaration of covenants, conditions, and restrictions that has been recorded in the official records of each county in which the common interest development is located:

(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.

(9) Section 1378.

(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. 3. Section 1378 is added to the Civil Code, to read:

1378. (a) This section applies if an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

(1) The association shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall be included in the association's governing documents. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the board of directors.

(2) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) A decision on a proposed change shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the board of directors.

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors of the association that made the decision, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board of directors or a body that has the same membership as the board of directors, at a meeting that satisfies the requirements of Section 1363.05.

(b) Nothing in this section authorizes a physical change to the common area in a manner that is inconsistent with an association's governing documents or governing law.

(c) An association shall annually provide its members with notice of any requirements for association approval of physical changes to property. The notice shall describe the types of changes that require association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

SEC. 3.5. Section 1378 is added to the Civil Code, to read:

1378. (a) This section applies if an association's governing documents require association approval before an owner of a separate interest may make a physical change to the owner's separate interest or to the common area. In reviewing and approving or disapproving a proposed change, the association shall satisfy the following requirements:

(1) The association shall provide a fair, reasonable, and expeditious procedure for making its decision. The procedure shall be included in the association's governing documents. The procedure shall provide for prompt deadlines. The procedure shall state the maximum time for response to an application or a request for reconsideration by the board of directors.

(2) A decision on a proposed change shall be made in good faith and may not be unreasonable, arbitrary, or capricious.

(3) A decision on a proposed change shall be consistent with any governing provision of law, including, but not limited to, the Fair Employment and Housing Act (Part 2.8 (commencing with Section 12900) of Division 3 of Title 2 of the Government Code.

(4) A decision on a proposed change shall be in writing. If a proposed change is disapproved, the written decision shall include both an explanation of why the proposed change is disapproved and a description of the procedure for reconsideration of the decision by the board of directors.

(5) If a proposed change is disapproved, the applicant is entitled to reconsideration by the board of directors of the association that made the decision, at an open meeting of the board. This paragraph does not require reconsideration of a decision that is made by the board of directors or a body that has the same membership as the board of directors, at a meeting that satisfies the requirements of Section 1363.05. Reconsideration by the board does not constitute dispute resolution within the meaning of Section 1363.820.

(b) Nothing in this section authorizes a physical change to the common area in a manner that is inconsistent with an association's governing documents or governing law.

(c) An association shall annually provide its members with notice of any requirements for association approval of physical changes to property. The notice shall describe the types of changes that require association approval and shall include a copy of the procedure used to review and approve or disapprove a proposed change.

SEC. 4. Section 1.5 of this bill incorporates amendments to Section 1357.120 of the Civil Code proposed by both this bill and AB 1836. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 1357.120 of the Civil Code, and (3) this bill is enacted after AB 1836, in which case Section 1 of this bill shall not become operative.

SEC. 5. Section 3.5 of this bill shall only become operative if Assembly Bill 1836 is enacted and becomes effective on or before

January 1, 2005, and adds Section 1363.820 to the Civil Code, in which case Section 3 of this bill shall not become operative.

CHAPTER 347

An act to amend Sections 1657, 1658, and 1658.2 of, and to add Section 1625.1 to, the Business and Professions Code, relating to the healing arts.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1625.1 is added to the Business and Professions Code, to read:

1625.1. (a) Any of the following entities may employ licensees and dental assistants and charge for the professional services they render, and shall not be deemed to be practicing dentistry within the meaning of Section 1625:

(1) A primary care clinic that is licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code.

(2) A primary care clinic that is exempt from licensure pursuant to subdivision (b), (c), or (h) of Section 1206 of the Health and Safety Code.

(3) A clinic owned or operated by a public hospital or health system.

(4) A clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

(b) The entities described in subdivision (a) shall not interfere with, control, or otherwise direct the professional judgment of a licensee or dental assistant acting within his or her scope of practice as defined in this chapter. A requirement that licensees shall constitute all or a percentage of the governing body of the entity shall not be applicable to these entities.

SEC. 2. Section 1657 of the Business and Professions Code is amended to read:

1657. (a) A licensed dentist may operate one mobile dental clinic or unit registered as a dental office or facility. The mobile dental clinic or unit shall be registered and operated in accordance with regulations established by the board, provided these regulations are not designed to prevent or lessen competition in service areas. A mobile dental clinic or unit registered and operated in accordance with the board's regulations and that has paid the fees established by the board, including a mobile

dental unit registered for the purpose specified in subdivision (d), shall otherwise be exempted from this article and Article 3.5 (commencing with Section 1658).

(b) A mobile service unit, as defined in subdivision (b) of Section 1765.105 of the Health and Safety Code, and a mobile unit operated by an entity that is exempt from licensure pursuant to subdivision (b), (c), or (h) of Section 1206 of the Health and Safety Code, are exempt from this article and Article 3.5 (commencing with Section 1658). Notwithstanding this exemption, the owner or operator of the mobile unit shall notify the board within 60 days of the date on which dental services are first delivered in the mobile unit, or the date on which the mobile unit's application pursuant to Section 1765.130 of the Health and Safety Code is approved, whichever is earlier.

(c) A licensee practicing in a mobile unit described in subdivision (b) is not subject to subdivision (a) as to that mobile unit.

(d) Notwithstanding Section 1625, a licensed dentist shall be permitted to operate a mobile dental unit provided by his or her property and casualty insurer as a temporary substitute site for the practice registered by him or her pursuant to Section 1650 as long as both of the following apply:

(1) The licensed dentist's registered place of practice has been rendered and remains unusable due to loss or calamity.

(2) The licensee's insurer registers the unit with the board in compliance with subdivision (a).

SEC. 3. Section 1658 of the Business and Professions Code is amended to read:

1658. (a) When a licensee desires to have more than one place of practice, he or she shall, prior to the opening of the additional office, apply to the board, pay the fee required by this chapter, and receive permission in writing from the board to have the additional place of practice.

''Place of practice'' means any dental office where any act of dentistry is practiced as defined by Section 1625, and includes a place of practice in which the applicant holds any proprietary interest of any nature whatsoever, or in which he holds any right to participate in the management or control thereof. A dentist who is the lessor of a dental office shall not be deemed to hold a proprietary interest in that place of practice, unless he is entitled to participate in the management or control of the dentistry practiced there.

(b) This section shall not apply to a licensee who practices dentistry outside his or her registered place of practice in any of the following places:

(1) Facilities licensed by the State Department of Health Services.

(2) Licensed health facilities as defined in Section 1250 of the Health and Safety Code.

(3) Clinics that are licensed under subdivision (a) of Section 1204 of, or that are exempt from licensure under subdivisions (b), (c), or (h) of Section 1206 of, the Health and Safety Code.

(4) Licensed community care facilities as defined in Section 1502 of the Health and Safety Code.

(5) Schools of any grade level, whether public or private.

(6) Public institutions including, but not limited to, federal, state, and local penal and correctional facilities.

(7) Mobile units which are operated by a public or governmental agency or a nonprofit or charitable organization and are approved by the board, provided that the mobile units meet all statutory or regulatory requirements.

(8) The home of a nonambulatory patient when a physician or registered nurse has provided a written note that the patient is unable to visit a dental office.

SEC. 4. Section 1658.2 of the Business and Professions Code is amended to read:

1658.2. (a) ''Additional place of practice,'' as used in this article, means any place of practice that increases the number of places of practice of the applicant, and includes an additional office that the applicant proposes to originally establish, either individually or in association with another, as well as an established place of practice that the applicant acquires or proposes to acquire, in whole or in part, by purchase, repossession, reassignment, gift, devise, bequest, or operation of law, except as otherwise provided in this article.

(b) A practice location described in subdivision (b) of Section 1658 does not constitute an additional place of practice.

CHAPTER 348

An act to amend Section 1375.7 of the Health and Safety Code, relating to health care service plans.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1375.7 of the Health and Safety Code is amended to read:

1375.7. (a) This section shall be known and may be cited as the Health Care Providers' Bill of Rights.

(b) No contract issued, amended, or renewed on or after January 1, 2003, between a plan and a health care provider for the provision of health care services to a plan enrollee or subscriber shall contain any of the following terms:

(1) (A) Authority for the plan to change a material term of the contract, unless the change has first been negotiated and agreed to by the provider and the plan or the change is necessary to comply with state or federal law or regulations or any accreditation requirements of a private sector accreditation organization. If a change is made by amending a manual, policy, or procedure document referenced in the contract, the plan shall provide 45 business days' notice to the provider, and the provider has the right to negotiate and agree to the change. If the plan and the provider cannot agree to the change to a manual, policy, or procedure document, the provider has the right to terminate the contract prior to the implementation of the change. In any event, the plan shall provide at least 45 business days' notice of its intent to change a material term, unless a change in state or federal law or regulations or any accreditation requirements of a private sector accreditation organization requires a shorter timeframe for compliance. However, if the parties mutually agree, the 45-business day notice requirement may be waived. Nothing in this subparagraph limits the ability of the parties to mutually agree to the proposed change at any time after the provider has received notice of the proposed change.

(B) If a contract between a provider and a plan provides benefits to enrollees or subscribers through a preferred provider arrangement, the contract may contain provisions permitting a material change to the contract by the plan if the plan provides at least 45 business days' notice to the provider of the change and the provider has the right to terminate the contract prior to the implementation of the change.

(C) If a contract between a noninstitutional provider and a plan provides benefits to enrollees or subscribers covered under the Medi-Cal or Healthy Families program and compensates the provider on a fee-for-service basis, the contract may contain provisions permitting a material change to the contract by the plan, if the following requirements are met:

(i) The plan gives the provider a minimum of 90 business days' notice of its intent to change a material term of the contract.

(ii) The plan clearly gives the provider the right to exercise his or her intent to negotiate and agree to the change within 30 business days of the provider's receipt of the notice described in clause (i).

(iii) The plan clearly gives the provider the right to terminate the contract within 90 business days from the date of the provider's receipt

of the notice described in clause (i) if the provider does not exercise the right to negotiate the change or no agreement is reached, as described in clause (ii).

(iv) The material change becomes effective 90 business days from the date of the notice described in clause (i) if the provider does not exercise his or her right to negotiate the change, as described in clause (ii), or to terminate the contract, as described in clause (iii).

(2) A provision that requires a health care provider to accept additional patients beyond the contracted number or in the absence of a number if, in the reasonable professional judgment of the provider, accepting additional patients would endanger patients' access to, or continuity of, care.

(3) A requirement to comply with quality improvement or utilization management programs or procedures of a plan, unless the requirement is fully disclosed to the health care provider at least 15 business days prior to the provider executing the contract. However, the plan may make a change to the quality improvement or utilization management programs or procedures at any time if the change is necessary to comply with state or federal law or regulations or any accreditation requirements of a private sector accreditation organization. A change to the quality improvement or utilization management programs or procedures shall be made pursuant to paragraph (1).

(4) A provision that waives or conflicts with any provision of this chapter. A provision in the contract that allows the plan to provide professional liability or other coverage or to assume the cost of defending the provider in an action relating to professional liability or other action is not in conflict with, or in violation of, this chapter.

(5) A requirement to permit access to patient information in violation of federal or state laws concerning the confidentiality of patient information.

(c) (1) When a contracting agent sells, leases, or transfers a health provider's contract to a payor, the rights and obligations of the provider shall be governed by the underlying contract between the health care provider and the contracting agent.

(2) For purposes of this subdivision, the following terms shall have the following meanings:

(A) ''Contracting agent'' has the meaning set forth in paragraph (2) of subdivision (d) of Section 1395.6.

(B) ''Payor'' has the meaning set forth in paragraph (3) of subdivision (d) of Section 1395.6.

(d) Any contract provision that violates subdivision (b) or (c) shall be void, unlawful, and unenforceable.

(e) The department shall compile the information submitted by plans pursuant to subdivision (h) of Section 1367 into a report and submit the

report to the Governor and the Legislature by March 15 of each calendar year.

(f) Nothing in this section shall be construed or applied as setting the rate of payment to be included in contracts between plans and health care providers.

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

(1) ''Health care provider'' means any professional person, medical group, independent practice association, organization, health care facility, or other person or institution licensed or authorized by the state to deliver or furnish health services.

(2) ''Material'' means a provision in a contract to which a reasonable person would attach importance in determining the action to be taken upon the provision.

SEC. 2. 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 349

An act to amend Sections 71020 and 78032 of, to repeal Section 66755 of, and to repeal Chapter 14.8 (commencing with Section 67359.10) of Part 40 of, the Education Code, relating to public postsecondary education.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 66755 of the Education Code is repealed.

SEC. 2. Chapter 14.8 (commencing with Section 67359.10) of Part 40 of the Education Code is repealed.

SEC. 3. Section 71020 of the Education Code is amended to read:

71020. Commencing on July 1, 1989, and every three years thereafter, the board of governors shall develop, and submit to the Governor and the respective chairs of the Assembly Committee on Higher Education and the Senate Committee on Education, a diversity paper concerning its own membership. The diversity paper shall provide

the board's assessment of its role in statewide representation of minorities, women, and the disabled.

SEC. 4. Section 78032 of the Education Code is amended to read:

78032. (a) Notwithstanding Section 78031, the Board of Governors of the California Community Colleges may, pursuant to a finding that one or more of the following concerns in any community college district requires the restriction of interdistrict attendance, impose one or more restrictions upon interdistrict attendance with regard to that district as it deems necessary:

(1) Protection of the financial health of the district, and of educational program integrity, including, but not limited to, maintenance of the appropriate quality and scope of student educational opportunity.

(2) The need to avoid overcrowding, in light of the available space in the district.

(3) The priority that resident students not be displaced by students who do not reside in the district.

(4) The avoidance of any serious disruption in the ethnic balance of the student population of any affected district.

(b) No restriction adopted under subdivision (a) shall apply for a period of longer than two years, absent additional action of the board of governors to continue that restriction.

(c) (1) No community college district shall recruit any student who is a resident of any other community college district, except where an agreement exists between those districts authorizing each district to recruit within the boundaries of the other district.

(2) If, pursuant to an agreement as described in paragraph (1), a community college district recruits within the boundaries of another community college district, it shall recruit from all high schools within that other district, and may not favor any high schools over other high schools within that other district unless it is intended to improve the racial balance of the recruiting community college district.

(3) For purposes of this section:

(A) ''Recruiting'' means either or both of the following actions by a community college district, where the apparent purpose is to encourage student attendance in that district:

(i) The mailing by a community college district, to any address not within its boundaries, of class schedules or other written information, except to current or former students of the district or at the addressee's request.

(ii) The personal visit by a representative of the community college district to any high school, except in response to an invitation from the school district of which the high school is a part.

(B) ''Recruiting'' does not include any information provided by a community college district through radio, television, or any newspaper

or other publication that is not published or otherwise issued by the district, and for which distribution is not limited to residents of the district.

(d) The board of governors shall authorize the Chancellor of the California Community Colleges to retain in any fiscal year an amount of up to 5 percent of the appropriation calculated under Chapter 5 (commencing with Section 84700) of Part 50 as a penalty applicable to any community college district that violates this article, including, but not necessarily limited to, any restriction imposed by the board of governors under this section. Any funds retained pursuant to this subdivision shall revert to the General Fund.

SEC. 5. The repeal of Chapter 14.8 (commencing with Section 67359.10) of Part 40 of the Education Code shall not impair the obligation of any bond issued and sold prior to January 1, 2005. All obligations of any public officer or agency under those bonds shall continue to be performed as if those statutory provisions had not been repealed.

CHAPTER 350

An act to add Article 6 (commencing with Section 18973) to Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code, relating to child abuse prevention.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Article 6 (commencing with Section 18973) is added to Chapter 11 of Part 6 of Division 9 of the Welfare and Institutions Code, to read:

Article 6. Citizen Review Panels

18973. (a) Each citizen review panel established pursuant to Section 5106a(c) of Title 42 of the United States Code shall examine the policies, procedures, and practices of state and local child protective services agencies and, where appropriate, specific cases, to evaluate the extent to which the agencies are effectively discharging their child protection responsibilities in accordance with the state child and family services plan and the child protection standards set forth under Section

5106a(b) of Title 42 of the United States Code, and with relevant sections of this code and the Penal Code.

(b) A citizen review panel may review the extent to which the state child protective services system is coordinated with the foster care and adoption programs established under Part E of Title IV of the Social Security Act (42 U.S.C. Sec. 670 et seq.).

(c) A panel may examine any other criteria its members consider important to ensure the protection of children.

(d) Each panel shall be composed of volunteer members who are broadly representative of the community in which a panel is established, including members who have expertise in the prevention and treatment of child abuse and neglect, private citizens, former consumers of services, court-appointed special advocates, foster parents, children's attorneys, law enforcement personnel, health and mental health professionals, substance abuse professionals, representatives from elementary and secondary education, representatives from higher education, mandated reporters, and representatives of tribal governments.

(e) The members and staff of a citizen review panel may not disclose to any person or government official any identifying information about any specific child protection case that is provided to the panel.

(f) Nothing in this section shall preclude a panel from releasing any information provided to the panel that will permit the panel to inform the public, a county child welfare services agency, a county board of supervisors, and other relevant agency concerning the panel's progress, findings, and recommendations, if the information does not contain identifying information about any specific child protection case.

(g) A panel shall attempt to obtain case information that is free of data that reveals the identity of the recipients of service.

(h) A violation of subdivision (e) may be punishable by a civil fine of up to five hundred dollars ($500).

CHAPTER 351

An act to add Section 683 to the Business and Professions Code, relating to healing arts.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 683 is added to the Business and Professions Code, to read:

683. (a) A board shall report, within 10 working days, to the State Department of Health Services the name and license number of a person whose license has been revoked, suspended, surrendered, made inactive by the licensee, or placed in another category that prohibits the licensee from practicing his or her profession. The purpose of the reporting requirement is to prevent reimbursement by the state for Medi-Cal and Denti-Cal services provided after the cancellation of a provider's professional license.

(b) ''Board,'' as used in this section, 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.

CHAPTER 352

An act to amend Section 33294 of the Food and Agricultural Code, relating to milk.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 33294 of the Food and Agricultural Code is amended to read:

33294. (a) The secretary shall fix the fee for dairy farm inspection not to exceed the actual directly related costs.

(b) Whenever the secretary finds that the cost of administering this chapter can be defrayed from revenue derived from lower fees, the secretary may adjust the fee, but in no case shall the initial inspection fee for producers who sell market milk at wholesale that is to be sold as graded market milk, exceed three mills ($0.003) per gallon of the first 45,000 gallons only on graded market milk that was sold during the quarter-year period preceding the date the inspection fee becomes due and payable.

(c) Notwithstanding the fee limit specified in this section for producers, the secretary may increase the inspection fee by an amount not to exceed one quarter mill ($0.00025) per gallon per annum.

(d) The secretary shall charge a dairy farm all actual direct costs for initial and any followup dairy farm inspections for a facility out of compliance in the initial inspection. However, in no event shall the fee for an initial inspection exceed the limitation established in subdivisions (a) and (b).

CHAPTER 353

An act to amend Sections 18533 and 23802 of, and to repeal Section 7057 of, the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 7057 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 18533 of the Revenue and Taxation Code, as amended by Section 1 of Chapter 370 of the Statutes of 2003, is amended to read:

18533. (a) (1) Notwithstanding subdivision (a) and the first sentence of subdivision (b) of Section 19006:

(A) An individual who has made a joint return may elect to seek relief under the procedures prescribed under subdivision (b), and

(B) If the individual is eligible to elect the application of subdivision (c), the individual may, in addition to any election under subparagraph (A), elect to limit the individual's liability for any deficiency with respect to the joint return in the manner prescribed under subdivision (c).

(2) Any determination under this section shall be made without regard to community property laws.

(b) (1) Under procedures prescribed by the Franchise Tax Board, if—

(A) A joint return has been made under this chapter for a taxable year,

(B) On that return there is an understatement of tax attributable to erroneous items of one individual filing the joint return,

(C) The other individual filing the joint return establishes that in signing the return he or she did not know of, and had no reason to know of, that understatement,

(D) Taking into account all facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for that taxable year attributable to that understatement, and

(E) The other individual elects (in the form and manner as the Franchise Tax Board may prescribe) the benefits of this subdivision not later than the date that is two years after the date the Franchise Tax Board has begun collection activities with respect to the individual making the election, then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to that understatement.

(2) If an individual who, but for subparagraph (C) of paragraph (1), would be relieved of liability under paragraph (1), establishes that in signing the return the individual did not know, and had no reason to know, the extent of the understatement, then the individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to the portion of the understatement of which that individual did not know and had no reason to know.

(3) For purposes of this subdivision, the term ''understatement'' has the meaning given to that term by Section 6662(d)(2)(A) of the Internal Revenue Code.

(c) (1) Except as provided in this subdivision, if an individual who has made a joint return for any taxable year elects the application of this subdivision, the individual's liability for any deficiency that is assessed with respect to the return may not exceed the portion of the deficiency properly allocable to the individual under subdivision (d).

(2) Except as provided in clause (ii) of subparagraph (A) of paragraph (3) or subparagraph (C) of paragraph (3), each individual who elects the application of this subdivision shall have the burden of proof with respect to establishing the portion of any deficiency allocable to that individual.

(3) (A) (i) An individual shall only be eligible to elect the application of this subdivision if—

(I) At the time the election is filed, that individual is no longer married to, or is legally separated from, the individual with whom that individual filed the joint return to which the election relates, or

(II) That individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(ii) If the Franchise Tax Board demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals, an election under this subdivision by either individual shall be invalid (and subdivision (a) and the first sentence of subdivision (b) of Section 19006 shall apply to the joint return).

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

(C) If the Franchise Tax Board demonstrates that an individual making an election under this subdivision had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency (or portion thereof) that is not allocable to the individual under subdivision (d), that election may not apply to that deficiency (or portion). This subparagraph does not apply where the individual with actual knowledge establishes that the individual signed the return under duress.

(4) (A) Notwithstanding any other provision of this subdivision, the portion of the deficiency for which the individual electing the application of this subdivision is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

(B) For purposes of this paragraph—

(i) The term ''disqualified asset'' means any property or right to property transferred to an individual making the election under this subdivision with respect to a joint return by the other individual filing the joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax.

(ii) (I) For purposes of clause (i), except as provided in subclause (II), any transfer that is made after the date that is one year before the date on which the first notice of proposed assessment under Article 3 (commencing with Section 19031) of Chapter 4 is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(II) Subclause (I) does not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to that decree or to any transfer that an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

(d) For purpose of subdivision (c)—

(1) The portion of any deficiency on a joint return allocated to an individual shall be the amount that bears the same ratio to the deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency (or portion thereof) is attributable to—

(A) The disallowance of a credit, or

(B) Any tax (other than tax imposed by Section 17041 or 17062) required to be included with the joint return, and the item is allocated to

one individual under paragraph (3), that deficiency (or portion) shall be allocated to that individual. Any item so allocated may not be taken into account under paragraph (1).

(3) For purposes of this subdivision—

(A) Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

(B) Under rules prescribed by the Franchise Tax Board, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

(C) The Franchise Tax Board may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Franchise Tax Board establishes that the allocation is appropriate due to fraud of one or both individuals.

(4) If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

(e) (1) In the case of an individual who elects to have subdivision (b) or (c) apply—

(A) (i) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one individual filing the joint return shall be made not less than 30 days after notification of the other individual filing the joint return.

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both individuals filing the joint return, unless, within that 30-day period, the individual making the election under subdivision (b) or (c) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint return appeals the determination to the board as provided in Section 19045.

(iii) The individual making the election under subdivision (b) or (c) may appeal the determination of the Franchise Tax Board of the appropriate relief available to the individual under this section if that appeal is filed during the 30-day period prescribed in clause (ii) and the appeal shall be treated as an appeal to the board under Section 19045. Notwithstanding the preceding sentence, the individual making the

election under subdivision (b) or (c) may appeal to the board at any time after the date that is six months after the date the election is filed with the Franchise Tax Board and before the close of the 30-day period prescribed in clause (ii).

(B) Except as otherwise provided in Section 19081 or 19082, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subdivision (b) or (c) for collection of any assessment to which the election relates until the expiration of the 30-day period described in clause (ii) of subparagraph (A), or, if an appeal to the board has been filed under clause (iii) or Section 19045, until the decision of the board has become final.

(2) The running of the period of limitations in Section 19371 on the collection of the assessment to which the petition under subparagraph (A) of paragraph (1) relates shall be suspended for the period during which the Franchise Tax Board is prohibited by subparagraph (B) of paragraph (1) from collecting by levy or a proceeding in court and for 60 days thereafter.

(3) (A) Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than Article 6 (commencing with Section 19441) of Chapter 6), a credit or refund shall be allowed or made to the extent attributable to the application of this section.

(B) In the case of any election under subdivision (b) or (c), if a decision of the board in any prior proceeding for the same taxable year has become final, that decision shall be conclusive except with respect to the qualification of the individual for relief that was not an issue in that proceeding. The exception contained in the preceding sentence does not apply if the board determines that the individual participated meaningfully in the prior proceeding.

(f) Under procedures prescribed by the Franchise Tax Board, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and relief is not available to the individual under subdivision (b) or (c), the Franchise Tax Board may relieve the individual of that liability.

(g) (1) The Franchise Tax Board may prescribe regulations providing methods for allocation of items other than the methods under paragraph (3) of subdivision (d).

(2) It is the intent of the Legislature that, in construing this section and any other sections that are specifically cross-referenced in this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 6015 of the Internal Revenue Code, as amended by Public Law 105-206, shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

(h) (1) Except as provided in paragraph (2), the amendments made by Section 5 of Chapter 931 of the Statutes of 1999, shall apply to any liability for tax arising after October 10, 1999, and any liability for tax arising on or before that date but remaining unpaid as of that date.

(2) The period specified under subparagraph (E) of paragraph (1) of subdivision (b) or subparagraph (B) of paragraph (3) of subdivision (c) does not expire before the date that is four years after the date of the first collection activity after October 10, 1999.

(i) (1) An individual who has made a joint return and has been granted relief under Section 6015 of the Internal Revenue Code, relating to joint and several liability with respect to a federal joint income tax return, shall be eligible for relief under this section if all of the following conditions are satisfied:

(A) The individual requests relief under this section.

(B) The facts and circumstances that apply to the understatement and liabilities for which the relief is requested are the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted relief under Section 6015 of the Internal Revenue Code.

(C) The individual requesting relief under this subdivision furnishes the Franchise Tax Board with a copy of the federal determination granting that individual relief under Section 6015 of the Internal Revenue Code. If the federal determination does not clearly identify the issues and liabilities for which the individual was granted relief under Section 6015 of the Internal Revenue Code, the Franchise Tax Board may request, from the individual requesting relief, any supporting documentation reasonably necessary to substantiate that the issues and liabilities for which relief is requested under this section are the same as the issues and liabilities for which the individual received relief under Section 6015 of the Internal Revenue Code.

(2) This subdivision does not apply if, prior to the expiration of the 30-day period described in clause (i) of subparagraph (A) of paragraph (1) of subdivision (e), the other individual that filed the joint return for which the relief is requested under this subdivision submits information to the Franchise Tax Board that indicates that relief should not be granted. For purposes of this paragraph, ''information that indicates that relief should not be granted'' is limited to the following:

(A) Information that indicates that the facts and circumstances that apply to the understatement and liabilities for which the relief is requested are not the same facts and circumstances that applied to the understatement and liabilities for which that individual was granted relief under Section 6015 of the Internal Revenue Code.

(B) Information that indicates that there has not been a federal determination granting relief under Section 6015 of the Internal Revenue

Code or that the federal determination granting relief under Section 6015 of the Internal Revenue Code has been modified, altered, withdrawn, canceled, or rescinded.

(C) Information indicating that the other individual, as described in the first sentence of this paragraph, did not have the opportunity to participate, within the meaning of Section 6015 of the Internal Revenue Code and the regulations thereunder, in the federal administrative or judicial proceeding that resulted in relief under Section 6015 of the Internal Revenue Code.

(j) If, prior to the date the Franchise Tax Board issues its determination with respect to a request for relief under this section, the individual requesting relief demonstrates to the Franchise Tax Board that a request for relief has been filed with the Internal Revenue Service pursuant to Section 6015 of the Internal Revenue Code and demonstrates that the request for relief involves the same facts and circumstances as the request for relief that is pending before the Franchise Tax Board, the Franchise Tax Board may not deny relief with respect to that request, in whole or in part, until federal action on the request for relief under Section 6015 of the Internal Revenue Code is final.

(k) The provisions of subdivisions (i) and (j) shall apply to both of the following:

(1) Any tax liability that becomes final on or after the effective date of the act adding subdivisions (i) and (j) to this section.

(2) Any unpaid tax liability that became final prior to the effective date of the act adding subdivisions (i) and (j) to this section.

(*l*) An individual may not be granted relief under this section if a court has revised the tax liability in a proceeding for dissolution of the marriage in accordance with subdivision (b) of Section 19006.

(m) This section shall cease to be operative on January 1, 2009, and as of that date is repealed.

SEC. 3. Section 18533 of the Revenue and Taxation Code, as added by Section 2 of Chapter 370 of the Statutes of 2003, is amended to read:

18533. (a) (1) Notwithstanding subdivision (a) and the first sentence of subdivision (b) of Section 19006:

(A) An individual who has made a joint return may elect to seek relief under the procedures prescribed under subdivision (b), and

(B) If the individual is eligible to elect the application of subdivision (c), the individual may, in addition to any election under subparagraph (A), elect to limit the individual's liability for any deficiency with respect to the joint return in the manner prescribed under subdivision (c).

(2) Any determination under this section shall be made without regard to community property laws.

(b) (1) Under procedures prescribed by the Franchise Tax Board, if—

(A) A joint return has been made under this chapter for a taxable year,

(B) On that return there is an understatement of tax attributable to erroneous items of one individual filing the joint return,

(C) The other individual filing the joint return establishes that in signing the return he or she did not know of, and had no reason to know of, that understatement,

(D) Taking into account all facts and circumstances, it is inequitable to hold the other individual liable for the deficiency in tax for that taxable year attributable to that understatement, and

(E) The other individual elects (in the form and manner as the Franchise Tax Board may prescribe) the benefits of this subdivision not later than the date that is two years after the date the Franchise Tax Board has begun collection activities with respect to the individual making the election, then the other individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to that understatement.

(2) If an individual who, but for subparagraph (C) of paragraph (1), would be relieved of liability under paragraph (1), establishes that in signing the return the individual did not know, and had no reason to know, the extent of the understatement, then the individual shall be relieved of liability for tax (including interest, penalties, and other amounts) for that taxable year to the extent that the liability is attributable to the portion of the understatement of which that individual did not know and had no reason to know.

(3) For purposes of this subdivision, the term ''understatement'' has the meaning given to that term by Section 6662(d)(2)(A) of the Internal Revenue Code.

(c) (1) Except as provided in this subdivision, if an individual who has made a joint return for any taxable year elects the application of this subdivision, the individual's liability for any deficiency that is assessed with respect to the return may not exceed the portion of the deficiency properly allocable to the individual under subdivision (d).

(2) Except as provided in clause (ii) of subparagraph (A) of paragraph (3) or subparagraph (C) of paragraph (3), each individual who elects the application of this subdivision shall have the burden of proof with respect to establishing the portion of any deficiency allocable to that individual.

(3) (A) (i) An individual shall only be eligible to elect the application of this subdivision if—

(I) At the time the election is filed, that individual is no longer married to, or is legally separated from, the individual with whom that individual filed the joint return to which the election relates, or

(II) That individual was not a member of the same household as the individual with whom the joint return was filed at any time during the 12-month period ending on the date the election is filed.

(ii) If the Franchise Tax Board demonstrates that assets were transferred between individuals filing a joint return as part of a fraudulent scheme by those individuals, an election under this subdivision by either individual shall be invalid (and subdivision (a) and the first sentence of subdivision (b) of Section 19006 shall apply to the joint return).

(B) An election under this subdivision for any taxable year shall be made not later than two years after the date on which the Franchise Tax Board has begun collection activities with respect to the individual making the election.

(C) If the Franchise Tax Board demonstrates that an individual making an election under this subdivision had actual knowledge, at the time the individual signed the return, of any item giving rise to a deficiency (or portion thereof) that is not allocable to the individual under subdivision (d), that election does not apply to that deficiency (or portion). This subparagraph does not apply where the individual with actual knowledge establishes that the individual signed the return under duress.

(4) (A) Notwithstanding any other provision of this subdivision, the portion of the deficiency for which the individual electing the application of this subdivision is liable (without regard to this paragraph) shall be increased by the value of any disqualified asset transferred to the individual.

(B) For purposes of this paragraph—

(i) The term ''disqualified asset'' means any property or right to property transferred to an individual making the election under this subdivision with respect to a joint return by the other individual filing the joint return if the principal purpose of the transfer was the avoidance of tax or payment of tax.

(ii) (I) For purposes of clause (i), except as provided in subclause (II), any transfer that is made after the date that is one year before the date on which the first notice of proposed assessment under Article 3 (commencing with Section 19031) of Chapter 4 is sent shall be presumed to have as its principal purpose the avoidance of tax or payment of tax.

(II) Subclause (I) does not apply to any transfer pursuant to a decree of divorce or separate maintenance or a written instrument incident to that decree or to any transfer that an individual establishes did not have as its principal purpose the avoidance of tax or payment of tax.

(d) For purpose of subdivision (c)—

(1) The portion of any deficiency on a joint return allocated to an individual shall be the amount that bears the same ratio to the deficiency as the net amount of items taken into account in computing the deficiency and allocable to the individual under paragraph (3) bears to the net amount of all items taken into account in computing the deficiency.

(2) If a deficiency (or portion thereof) is attributable to—

(A) The disallowance of a credit, or

(B) Any tax (other than tax imposed by Section 17041 or 17062) required to be included with the joint return, and the item is allocated to one individual under paragraph (3), that deficiency (or portion) shall be allocated to that individual. Any item so allocated may not be taken into account under paragraph (1).

(3) For purposes of this subdivision—

(A) Except as provided in paragraphs (4) and (5), any item giving rise to a deficiency on a joint return shall be allocated to individuals filing the return in the same manner as it would have been allocated if the individuals had filed separate returns for the taxable year.

(B) Under rules prescribed by the Franchise Tax Board, an item otherwise allocable to an individual under subparagraph (A) shall be allocated to the other individual filing the joint return to the extent the item gave rise to a tax benefit on the joint return to the other individual.

(C) The Franchise Tax Board may provide for an allocation of any item in a manner not prescribed by subparagraph (A) if the Franchise Tax Board establishes that the allocation is appropriate due to fraud of one or both individuals.

(4) If an item of deduction or credit is disallowed in its entirety solely because a separate return is filed, the disallowance shall be disregarded and the item shall be computed as if a joint return had been filed and then allocated between the spouses appropriately.

(5) If the liability of a child of a taxpayer is included on a joint return, that liability shall be disregarded in computing the separate liability of either spouse and that liability shall be allocated appropriately between the spouses.

(e) (1) In the case of an individual who elects to have subdivision (b) or (c) apply—

(A) (i) The determination of the Franchise Tax Board as to whether the liability is to be revised as to one individual filing the joint return shall be made not less than 30 days after notification of the other individual filing the joint return.

(ii) Any action taken under this section shall be treated as though it were action on a protest taken under Section 19044 and shall become final upon the expiration of 30 days from the date that notice of the action is mailed to both individuals filing the joint return, unless, within that

30-day period, the individual making the election under subdivision (b) or (c) appeals the determination to the board as provided in clause (iii) or the other individual filing the joint return appeals the determination to the board as provided in Section 19045.

(iii) The individual making the election under subdivision (b) or (c) may appeal the determination of the Franchise Tax Board of the appropriate relief available to the individual under this section if that appeal is filed during the 30-day period prescribed in clause (ii) and the appeal shall be treated as an appeal to the board under Section 19045. Notwithstanding the preceding sentence, the individual making the election under subdivision (b) or (c) may appeal to the board at any time after the date that is six months after the date the election is filed with the Franchise Tax Board and before the close of the 30-day period prescribed in clause (ii).

(B) Except as otherwise provided in Section 19081 or 19082, no levy or proceeding in court shall be made, begun, or prosecuted against the individual making an election under subdivision (b) or (c) for collection of any assessment to which the election relates until the expiration of the 30-day period described in clause (ii) of subparagraph (A), or, if an appeal to the board has been filed under clause (iii) or Section 19045, until the decision of the board has become final.

(2) The running of the period of limitations in Section 19371 on the collection of the assessment to which the petition under subparagraph (A) of paragraph (1) relates shall be suspended for the period during which the Franchise Tax Board is prohibited by subparagraph (B) of paragraph (1) from collecting by levy or a proceeding in court and for 60 days thereafter.

(3) (A) Except as provided in subparagraph (B), notwithstanding any other law or rule of law (other than Article 6 (commencing with Section 19441) of Chapter 6), a credit or refund shall be allowed or made to the extent attributable to the application of this section.

(B) In the case of any election under subdivision (b) or (c), if a decision of the board in any prior proceeding for the same taxable year has become final, that decision shall be conclusive except with respect to the qualification of the individual for relief that was not an issue in that proceeding. The exception contained in the preceding sentence does not apply if the board determines that the individual participated meaningfully in the prior proceeding.

(f) Under procedures prescribed by the Franchise Tax Board, if taking into account all the facts and circumstances, it is inequitable to hold the individual liable for any unpaid tax or any deficiency (or any portion of either), and relief is not available to the individual under subdivision (b) or (c), the Franchise Tax Board may relieve the individual of that liability.

(g) (1) The Franchise Tax Board may prescribe regulations providing methods for allocation of items other than the methods under paragraph (3) of subdivision (d).

(2) It is the intent of the Legislature that, in construing this section and any other sections that are specifically cross-referenced in this section, any regulations that may be promulgated by the Secretary of the Treasury under Section 6015 of the Internal Revenue Code, as amended by Public Law 105-206, shall apply to the extent that those regulations do not conflict with this section or with any regulations that may be promulgated by the Franchise Tax Board.

(h) (1) Except as provided in paragraph (2), the amendments made by Section 5 of Chapter 931 of the Statutes of 1999 shall apply to any liability for tax arising after October 10, 1999, and any liability for tax arising on or before that date but remaining unpaid as of that date.

(2) The period specified under subparagraph (E) of paragraph (1) of subdivision (b) or subparagraph (B) of paragraph (3) of subdivision (c) does not expire before the date that is four years after the date of the first collection activity after October 10, 1999.

(i) An individual may not be granted relief under this section if a court has revised the tax liability in a proceeding for dissolution of the marriage in accordance with subdivision (b) of Section 19006.

(j) This section shall become operative on January 1, 2009.

SEC. 4. Section 23802 of the Revenue and Taxation Code is amended to read:

23802. (a) Section 1363(a) of the Internal Revenue Code, relating to the taxability of an ''S'' corporation does not apply.

(b) Corporations that are ''S'' corporations under this chapter shall continue to be subject to the taxes imposed under Chapter 2 (commencing with Section 23101) and Chapter 3 (commencing with Section 23501), except as follows:

(1) The tax imposed under Section 23151 or 23501 shall be imposed at a rate of $1^1/_2$ percent rather than the rate specified in those sections.

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

(c) An ''S'' corporation shall be subject to the minimum franchise tax imposed under Section 23153.

(d) (1) For purposes of subdivision (b), an ''S'' corporation shall be allowed a deduction under Section 24416 or 24416.1 (relating to net operating loss deductions), but only with respect to losses incurred during periods in which the corporation is an ''S'' corporation for purposes of this part.

(2) Section 1371(b) of the Internal Revenue Code, relating to denial of carryovers between ''C'' years and ''S'' years, shall apply for purposes of the tax imposed under subdivision (b), except as provided in paragraph (1).

(3) The provisions of this subdivision do not affect the amount of any item of income or loss computed in accordance with the provisions of Section 1366 of the Internal Revenue Code, relating to pass-thru of items to shareholders.

(4) For purposes of subdivision (b) of Section 17276, relating to limitations on loss carryovers, losses passed through to shareholders of an''S'' corporation, to the extent otherwise allowable without application of that subdivision, shall be fully included in the net operating loss of that shareholder and then that subdivision shall be applied to the entire net operating loss.

(e) For purposes of computing the taxes specified in subdivision (b), an''S'' corporation shall be allowed a deduction from income for built-in gains and passive investment income for which a tax has been imposed under this part in accordance with the provisions of Section 1374 of the Internal Revenue Code, relating to tax imposed on certain built-in gains, or Section 1375 of the Internal Revenue Code, relating to tax imposed on passive investment income.

(f) For purposes of computing taxes imposed under this part, as provided in subdivision (b):

(1) An ''S'' corporation shall compute its deductions for amortization and depreciation in accordance with the provisions of Part 10 (commencing with Section 17001) of Division 2.

(2) Section 465 of the Internal Revenue Code, relating to limitation of deductions to the amount at risk, shall be applied in the same manner as in the case of an individual.

(3) (A) Section 469 of the Internal Revenue Code, relating to limitations on passive activity losses and credits, shall be applied in the same manner as in the case of an individual. For purposes of the tax imposed under Section 23151 or 23501, as modified by this section, material participation shall be determined in accordance with Section 469(h) of the Internal Revenue Code, relating to certain closely held ''C'' corporations and personal service corporations.

(B) For purposes of this paragraph, the ''adjusted gross income'' of the''S'' corporation shall be equal to its ''net income,'' as determined under Section 24341 with the modifications required by this subdivision, except that no deduction shall be allowed for contributions allowed by Section 24357.

(4) The exclusion provided under Section 18152.5 may not be allowed to an ''S'' corporation.

(5) The deduction for bad debts under paragraph (2) of subdivision (a) of Section 24348 may not be allowed to an ''S'' corporation.

(g) (1) The provisions of Section 1363(d) of the Internal Revenue Code, relating to recapture of LIFO benefits, shall be modified for purposes of this part to refer to Section 19101 in lieu of Section 6601 of the Internal Revenue Code.

(2) For purposes of Section 19023, relating to the definition of ''estimated tax,'' and Section 19142, relating to an addition to tax for underpayment of estimated tax, the tax imposed pursuant to this subdivision is not a tax imposed by this part.

SEC. 5. The amendments made to paragraph (2) of subdivision (h) of Section 18533 in both Section 1 and Section 2 of this act are technical in nature and are declaratory of existing statutory law.

CHAPTER 354

An act to amend Section 17002 of the Corporations Code, and to amend Sections 69.4, 214, 214.01, 214.02, 214.5, 214.8, 214.14, 17076, 19191, 19192, and 19194 of, and to add Section 17049 to, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 17002 of the Corporations Code is amended to read:

17002. Subject to any limitations contained in the articles of organization and to compliance with any other applicable laws, a limited liability company may engage in any lawful business activity, whether or not for profit, except the banking business, the business of issuing policies of insurance and assuming insurance risks, or the trust company business.

SEC. 1.5. Section 69.4 of the Revenue and Taxation Code is amended to read:

69.4. (a) (1) Notwithstanding any other provision of law, pursuant to the authority of subdivision (i) of Section 2 of Article XIII A of the California Constitution, the base year value of qualified contaminated property may be transferred, subject to the conditions and limitations of that subdivision and this section, to a comparable replacement property of equal or lesser value that is located in the same county and is acquired

or newly constructed as a replacement for the contaminated property, pursuant to subparagraph (A) of paragraph (1) of that subdivision.

(2) The limitation in paragraph (1) requiring that the qualified contaminated property and the replacement property be located in the same county does not apply in a county in which the county board of supervisors adopts a resolution making the provisions of this section applicable to replacement properties acquired to replace qualified contaminated properties located in another county within this state. The resolution shall specify the date on and after which its provisions are applicable. The specified date may be a date earlier than the date on which the county adopts the ordinance, but no earlier than November 3, 1998.

(b) The replacement property shall be acquired or newly constructed within five years after the original property is sold or otherwise transferred.

(c) (1) Upon the sale or transfer of the original property, the assessor shall determine a new base year value for that property in accordance with subdivision (a) of Section 2 of Article XII A of the California Constitution and Section 110.1.

(2) This section does not apply unless the sale or transfer of the original property is a change in ownership that does either of the following:

(A) Subjects the original property to reappraisal at its current fair market value in accordance with Section 110.1 or 5803.

(B) Results in a base year value determined in accordance with this section, Section 69, Section 69.3, or Section 69.5 because the property qualifies under this section, Section 69, Section 69.3, or Section 69.5 as a replacement dwelling or property.

(d) Property tax relief under this section is not available for a replacement property if the owner or owners of the original property do either of the following:

(1) Receive property tax relief under Section 74.7.

(2) Sign a claim under Section 63.1 allowing the base year value to stay with the original property.

(e) For purposes of this section:

(1) The ''original property'' means the qualified contaminated property.

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

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

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

(C) One hundred fifteen percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the third year following the date of the sale of the original property.

(D) One hundred twenty percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the fourth year following the date of the sale of the original property.

(E) One hundred twenty-five percent of the amount of the full cash value of the original property, if the replacement property is purchased or newly constructed within the fifth year following the date of the sale of the original property.

For purposes of this paragraph, if the replacement property is, in part, purchased and, in part, newly constructed, the date the replacement property is ''acquired or newly constructed'' is the date of acquisition or the date of completion of construction, whichever is later.

(3) The base year value of the original property shall be the base year value of the original property as determined in accordance with Section 110.1, with the inflation factor adjustments permitted by subdivision (f) of Section 110.1. The base year value of the original property shall also include any inflation factor adjustments permitted by subdivision (f) of Section 110.1 up to the date the replacement property is acquired or newly constructed, regardless of whether the claimant continued to own the original property during this entire period. The base year or years used to compute the base year value of the original property shall be deemed to be the base year or years of any property to which that base year value is transferred pursuant to this section.

(4) ''Fair market value of the replacement property'' means the full cash value of the replacement property determined in accordance with Section 110.1 as of the date on which that property was acquired or new construction was completed. If the replacement property is, in part, acquired and, in part, newly constructed, ''fair market value of the replacement property'' means the fair market value of the land and the improvements as of the date of completion.

(5) ''Fair market value of the qualified contaminated property'' means the full cash value of the qualified contaminated property, as if that property was not contaminated, determined in accordance with Section 110.1, as of the date of its sale or transfer by the claimant.

(6) ''Claimant'' means any owner of qualified contaminated property claiming the property tax relief provided by this section.

(7) ''Comparable replacement property'' means a property that is similar in utility and function to the property that it replaces. Property is similar in function and utility if it is, or is intended to be, used in the same manner as the qualified contaminated property.

(f) (1) A claimant is not eligible for the property tax relief provided by this section unless a claim is filed within three years of the date the replacement property was purchased or the new construction of the replacement property was completed.

(2) The claimant shall provide to the assessor the following information:

(A) Proof that the claimant did not participate or acquiesce in any act or omission that rendered the real property uninhabitable or unusable, as applicable, or is related to any individual or entity that committed that act or omission.

(B) Proof that the qualified contaminated property has been designated as a toxic or environmental hazard or as an environmental cleanup site by an agency of the State of California or the federal government.

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

(g) (1) Upon the timely filing of a claim, the assessor shall adjust the new base year value as of the date the replacement property is acquired or the date the new construction of the replacement property is completed, whichever is later.

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

(3) Notwithstanding Section 75.10, Chapter 3.5 (commencing with Section 75) of Part 0.5 of Division 1 shall be utilized for purposes of implementing this subdivision, including adjustments of the new base year value of replacement properties acquired prior to the sale or transfer of the qualified contaminated property.

(h) This section applies only to replacement property that is acquired or newly constructed on or after January 1, 1995.

SEC. 2. Section 214 of the Revenue and Taxation Code is amended to read:

214. (a) Property used exclusively for religious, hospital, scientific, or charitable purposes owned and operated by community chests, funds, foundations, limited liability companies, or corporations organized and operated for religious, hospital, scientific, or charitable purposes is exempt from taxation, including ad valorem taxes to pay the

interest and redemption charges on any indebtedness approved by the voters prior to July 1, 1978, or any bonded indebtedness for the acquisition or improvement of real property approved on or after July 1, 1978, by two-thirds of the votes cast by the voters voting on the proposition, if:

(1) The owner is not organized or operated for profit. However, in the case of hospitals, the organization shall not be deemed to be organized or operated for profit if, during the immediately preceding fiscal year, operating revenues, exclusive of gifts, endowments and grants-in-aid, did not exceed operating expenses by an amount equivalent to 10 percent of those operating expenses. As used herein, operating expenses include depreciation based on cost of replacement and amortization of, and interest on, indebtedness.

(2) No part of the net earnings of the owner inures to the benefit of any private shareholder or individual.

(3) The property is used for the actual operation of the exempt activity, and does not exceed an amount of property reasonably necessary to the accomplishment of the exempt purpose.

(A) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to use of the property for either or both of the following described activities if that use is occasional:

(i) The owner conducts fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the owner and are used to further the exempt activity of the owner.

(ii) The owner permits any other organization that meets all of the requirements of this subdivision, other than ownership of the property, to conduct fundraising activities on the property and the proceeds derived from those activities are not unrelated business taxable income, as defined in Section 512 of the Internal Revenue Code, of the organization, are not subject to the tax on unrelated business taxable income that is imposed by Section 511 of the Internal Revenue Code, and are used to further the exempt activity of the organization.

(B) For purposes of subparagraph (A):

(i) ''Occasional use'' means use of the property on an irregular or intermittent basis by the qualifying owner or any other qualifying organization described in clause (ii) of subparagraph (A) that is incidental to the primary activities of the owner or the other organization.

(ii) ''Fundraising activities'' means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited.

(C) Subparagraph (A) shall have no application in determining whether paragraph (3) has been satisfied unless the owner of the property and any other organization using the property as provided in subparagraph (A) have filed with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(D) For the purposes of determining whether the property is used for the actual operation of the exempt activity, consideration shall not be given to the use of the property for meetings conducted by any other organization if the meetings are incidental to the other organization's primary activities, are not fundraising meetings or activities as defined in subparagraph (B), are held no more than once per week, and the other organization and its use of the property meet all other requirements of paragraphs (1) to (5), inclusive. The owner of the other organization also shall file with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(E) Nothing in subparagraph (A), (B), (C), or (D) shall be construed to either enlarge or restrict the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(4) The property is not used or operated by the owner or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor, or bondholder of the owner or operator, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(5) The property is not used by the owner or members thereof for fraternal or lodge purposes, or for social club purposes except where that use is clearly incidental to a primary religious, hospital, scientific, or charitable purpose.

(6) The property is irrevocably dedicated to religious, charitable, scientific, or hospital purposes and upon the liquidation, dissolution, or abandonment of the owner will not inure to the benefit of any private person except a fund, foundation, or corporation organized and operated for religious, hospital, scientific, or charitable purposes.

(7) The property, if used exclusively for scientific purposes, is used by a foundation or institution that, in addition to complying with the foregoing requirements for the exemption of charitable organizations in general, has been chartered by the Congress of the United States (except that this requirement shall not apply when the scientific purposes are medical research), and whose objects are the encouragement or conduct of scientific investigation, research, and discovery for the benefit of the community at large.

The exemption provided for herein shall be known as the ''welfare exemption.'' This exemption shall be in addition to any other exemption

now provided by law, and the existence of the exemption provision in paragraph (2) of subdivision (a) of Section 202 shall not preclude the exemption under this section for museum or library property. Except as provided in subdivision (e), this section shall not be construed to enlarge the college exemption.

(b) Property used exclusively for school purposes of less than collegiate grade and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(c) Property used exclusively for nursery school purposes and owned and operated by religious, hospital, or charitable funds, foundations, limited liability companies, or corporations, which property and funds, foundations, limited liability companies, or corporations meet all the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(d) Property used exclusively for a noncommercial educational FM broadcast station or an educational television station, and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

(e) Property used exclusively for religious, charitable, scientific, or hospital purposes and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations or educational institutions of collegiate grade, as defined in Section 203, which property and funds, foundations, limited liability companies, corporations, or educational institutions meet all of the requirements of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. As to educational institutions of collegiate grade, as defined in Section 203, the requirements of paragraph (6) of subdivision (a) shall be deemed to be met if both of the following are met:

(1) The property of the educational institution is irrevocably dedicated in its articles of incorporation to charitable and educational purposes, to religious and educational purposes, or to educational purposes.

(2) The articles of incorporation of the educational institution provide for distribution of its property upon its liquidation, dissolution, or abandonment to a fund, foundation, or corporation organized and operated for religious, hospital, scientific, charitable, or educational purposes meeting the requirements for exemption provided by Section 203 or this section.

(f) Property used exclusively for housing and related facilities for elderly or handicapped families and financed by, including, but not limited to, the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), and owned and operated by religious, hospital, scientific, or charitable funds, foundations, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section.

The amendment of this paragraph made by Chapter 1102 of the Statutes of 1984 does not constitute a change in, but is declaratory of, the existing law. However, no refund of property taxes shall be required as a result of this amendment for any fiscal year prior to the fiscal year in which the amendment takes effect.

Property used exclusively for housing and related facilities for elderly or handicapped families at which supplemental care or services designed to meet the special needs of elderly or handicapped residents are not provided, or that is not financed by the federal government pursuant to Section 202 of Public Law 86-372 (12 U.S.C. Sec. 1701q), as amended, Section 231 of Public Law 73-479 (12 U.S.C. Sec. 1715v), Section 236 of Public Law 90-448 (12 U.S.C. Sec. 1715z), or Section 811 of Public Law 101-625 (42 U.S.C. Sec. 8013), shall not be entitled to exemption pursuant to this subdivision unless the property is used for housing and related facilities for low- and moderate-income elderly or handicapped families. Property that would otherwise be exempt pursuant to this subdivision, except that it includes some housing and related facilities for other than low- or moderate-income elderly or handicapped families, shall be entitled to a partial exemption. The partial exemption shall be equal to that percentage of the value of the property that is equal to the percentage that the number of low- and moderate-income elderly and handicapped families occupying the property represents of the total number of families occupying the property.

As used in this subdivision, ''low and moderate income'' has the same meaning as the term ''persons and families of low or moderate income'' as defined by Section 50093 of the Health and Safety Code.

(g) (1) Property used exclusively for rental housing and related facilities and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations, including limited partnerships in which the managing general partner or eligible limited liability company, is an eligible nonprofit corporation, meeting all of the requirements of this section, or by veterans' organizations, as described in Section 215.1, meeting all the requirements of paragraphs (1) to (7), inclusive, of subdivision (a), shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section and shall be entitled to a partial exemption equal to that percentage of the value of the property that the portion of the property serving lower income households represents of the total property in any year in which either of the following criteria applies:

(A) The acquisition, rehabilitation, development, or operation of the property, or any combination of these factors, is financed with tax-exempt mortgage revenue bonds or general obligation bonds, or is financed by local, state, or federal loans or grants and the rents of the occupants who are lower income households do not exceed those prescribed by deed restrictions or regulatory agreements pursuant to the terms of the financing or financial assistance.

(B) The owner of the property is eligible for and receives low-income housing tax credits pursuant to Section 42 of the Internal Revenue Code of 1986, as added by Public Law 99-514.

(C) In the case of a claim, other than a claim with respect to property owned by a limited partnership in which the managing general partner is an eligible nonprofit corporation, that is filed for the 2000–01 fiscal year or any fiscal year thereafter, 90 percent or more of the occupants of the property are lower income households whose rent does not exceed the rent prescribed by Section 50053 of the Health and Safety Code. The total exemption amount allowed under this subdivision to a taxpayer, with respect to a single property or multiple properties for any fiscal year on the sole basis of the application of this subparagraph, may not exceed twenty thousand dollars ($20,000) of tax.

(2) In order to be eligible for the exemption provided by this subdivision, the owner of the property shall do both of the following:

(A) (i) For any claim filed for the 2000–01 fiscal year or any fiscal year thereafter, certify and ensure, subject to the limitation in clause (ii), that there is an enforceable and verifiable agreement with a public agency, a recorded deed restriction, or other legal document that restricts the project's usage and that provides that the units designated for use by lower income households are continuously available to or occupied by lower income households at rents that do not exceed those prescribed by Section 50053 of the Health and Safety Code, or, to the extent that the

terms of federal, state, or local financing or financial assistance conflicts with Section 50053, rents that do not exceed those prescribed by the terms of the financing or financial assistance.

(ii) In the case of a limited partnership in which the managing general partner is an eligible nonprofit corporation, the restriction and provision specified in clause (i) shall be contained in an enforceable and verifiable agreement with a public agency, or in a recorded deed restriction to which the limited partnership certifies.

(B) Certify that the funds that would have been necessary to pay property taxes are used to maintain the affordability of, or reduce rents otherwise necessary for, the units occupied by lower income households.

(3) As used in this subdivision, ''lower income households'' has the same meaning as the term ''lower income households'' as defined by Section 50079.5 of the Health and Safety Code.

(h) Property used exclusively for an emergency or temporary shelter and related facilities for homeless persons and families and owned and operated by religious, hospital, scientific, or charitable funds, foundations, limited liability companies, or corporations meeting all of the requirements of this section shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the California Constitution and this section. Property that otherwise would be exempt pursuant to this subdivision, except that it includes housing and related facilities for other than an emergency or temporary shelter, shall be entitled to a partial exemption.

As used in this subdivision, ''emergency or temporary shelter'' means a facility that would be eligible for funding pursuant to Chapter 11 (commencing with Section 50800) of Part 2 of Division 31 of the Health and Safety Code.

(i) Property used exclusively for housing and related facilities for employees of religious, charitable, scientific, or hospital organizations that meet all the requirements of subdivision (a) and owned and operated by funds, foundations, limited liability companies, or corporations that meet all the requirements of subdivision (a) shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the California Constitution and this section to the extent the residential use of the property is institutionally necessary for the operation of the organization.

(j) For purposes of this section, charitable purposes include educational purposes. For purposes of this subdivision, ''educational purposes'' means those educational purposes and activities for the benefit of the community as a whole or an unascertainable and indefinite portion thereof, and do not include those educational purposes and activities that are primarily for the benefit of an organization's shareholders. Educational activities include the study of relevant

information, the dissemination of that information to interested members of the general public, and the participation of interested members of the general public.

(k) In the case of property used exclusively for the exempt purposes specified in this section, owned and operated by limited liability companies that are organized and operated for those purposes, the State Board of Equalization shall adopt regulations to specify the ownership, organizational, and operational requirements for those companies to qualify for the exemption provided by this section.

(*l*) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 3. Section 214.01 of the Revenue and Taxation Code is amended to read:

214.01. (a) For the purpose of Section 214, property shall be deemed irrevocably dedicated to religious, charitable, scientific, or hospital purposes only if a statement of irrevocable dedication to only these purposes is found in the articles of incorporation of the corporation, or in the case of any other fund or foundation, limited liability company, or corporation chartered by an act of Congress, in the bylaws, articles of association, articles of organization, constitution, or regulations thereof, as determined by the State Board of Equalization.

(b) If, when performing the duties specified by Section 254.6, the board finds that an applicant for the welfare exemption is ineligible for an organizational clearance certificate, because at the time of the filing of the claim required by Section 254.6, the applicant's articles of incorporation, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, articles of organization, constitution or regulations, did not comply with the provisions of this section, the board shall notify the applicant in writing. The applicant shall have until the next succeeding lien date to amend its articles of incorporation, or in the case of any noncorporate fund or foundation, its bylaws, articles of association, articles of organization, constitution or regulations, and to file a certified copy of these amendments that conform to the provisions of this section with the board, and the board shall make a finding that the applicant, if otherwise qualified, is eligible for an organizational clearance certificate and forward that finding to the assessor.

(c) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 4. Section 214.02 of the Revenue and Taxation Code is amended to read:

214.02. (a) Except as provided in subdivision (b) or (c), property that is used exclusively for the preservation of native plants or animals, biotic communities, geological or geographical formations of scientific or educational interest, or open-space lands used solely for recreation

and for the enjoyment of scenic beauty, is open to the general public subject to reasonable restrictions concerning the needs of the land, and is owned and operated by a scientific or charitable fund, foundation, limited liability company, or corporation, the primary interest of which is to preserve those natural areas, and that meets all the requirements of Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Sections 4 and 5 of Article XIII of the Constitution of the State of California and Section 214.

(b) The exemption provided by this section shall not apply to any property of an organization that owns in the aggregate 30,000 acres or more in one county that were exempt under this section prior to March 1, 1983, or that are proposed to be exempt, unless the nonprofit organization that holds the property is fully independent of the owner of any taxable real property that is adjacent to the property otherwise qualifying for tax exemption under this section. For purposes of this section, the nonprofit organization that holds the property shall be considered fully independent if the exempt property is not used or operated by that organization or by any other person so as to benefit any officer, trustee, director, shareholder, member, employee, contributor or bondholder of the exempt organization or operator, or the owner of any adjacent property, or any other person, through the distribution of profits, payment of excessive charges or compensations, or the more advantageous pursuit of their business or profession.

(c) The exemption provided by this section shall not apply to property that is reserved for future development.

(d) This section shall be operative from the lien date in 1983 to and including the lien date in 2012, after which date this section shall become inoperative, and as of January 1, 2013, this section is repealed.

(e) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 5. Section 214.5 of the Revenue and Taxation Code is amended to read:

214.5. (a) Property used exclusively for school purposes of less than collegiate grade, or exclusively for purposes of both schools of and less than collegiate grade, and owned and operated by religious, hospital or charitable funds, foundations or corporations, which property and funds, foundations, limited liability companies, or corporations meet all of the requirements of Section 214, shall be deemed to be within the exemption provided for in subdivision (b) of Section 4 and Section 5 of Article XIII of the Constitution of the State of California and Section 214. This section shall not be construed to enlarge the college exemption.

(b) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 6. Section 214.8 of the Revenue and Taxation Code is amended to read:

214.8. (a) Except as provided in Sections 213.7 and 231, and as provided in subdivision (g) of Section 214 with respect to veterans' organizations, the ''welfare exemption'' shall not be granted to any organization unless it is qualified as an exempt organization under either Section 23701d of this code or Section 501(c)(3) of the Internal Revenue Code. This section shall not be construed to enlarge the ''welfare exemption'' to apply to organizations qualified under Section 501(c)(3) of the Internal Revenue Code of 1954 but not otherwise qualified for the ''welfare exemption'' under other provisions of this code.

The exemption for veterans' organizations shall not be granted to any organization unless it is qualified as an exempt organization under either Section 23701f or 23701w of this code or under Section 501(c)(4) or 501(c)(19) of the Internal Revenue Code. This section shall not be construed to enlarge the ''veterans' organization exemption'' to apply to organizations qualified under Section 501(c)(4) or 501(c)(19) of the Internal Revenue Code but not otherwise qualified for the ''veterans' organization exemption'' under other provisions of this code.

(b) For purposes of subdivision (a), an organization shall not be deemed to be qualified as an exempt organization unless the organization files with the assessor a valid organizational clearance certificate issued pursuant to Section 254.6.

(c) (1) For purposes of subdivision (a), a limited liability company wholly owned by one or more qualifying organizations that are exempt under Section 23701d or under Section 501(c)(3) of the Internal Revenue Code shall qualify as an exempt organization.

(2) In the case of a limited liability company that does not have a valid unrevoked letter from the Franchise Tax Board or the Internal Revenue Service, the limited liability company may not be deemed to be qualified as an exempt organization unless each member of the limited liability company files with the board a copy of a valid, unrevoked letter or ruling from either the Franchise Tax Board or the Internal Revenue Service that states that the organization qualifies as an exempt organization under the appropriate provisions of the Revenue and Taxation Code or the Internal Revenue Code.

(d) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 7. Section 214.14 of the Revenue and Taxation Code is amended to read:

214.14. (a) Property used exclusively for the charitable purposes of museums and owned and operated by a religious, hospital, scientific, or charitable fund, foundation, limited liability company, or corporation which meets all the requirements of subdivision (a) of Section 214 shall

be deemed to be within the exemption provided by Sections 4 and 5 of Article XIII of the California Constitution and Section 214.

(b) For purposes of this section:

(1) Property used exclusively for the charitable purposes of museums shall include property used for activities and facilities related to the primary charitable purposes of museums and reasonably necessary and incidental to those purposes.

(2) Property used exclusively for the charitable purposes of museums shall not be required to be indispensable to the primary charitable purposes of museums.

(3) Property used exclusively for the charitable purposes of museums shall not include property used for activities and facilities not related to the primary charitable purposes of museums and not reasonably necessary or incidental to those purposes.

(4) Property used exclusively for the charitable purposes of museums shall include property owned by a nonprofit association or organization performing auxiliary services to any city or county museum in the state and used for the storage of items donated for an annual rummage sale, the proceeds of which, after taking into account the expenses of the nonprofit association or organization, are used to provide support to those museums. For purposes of this subdivision, ''storage of items donated for an annual rummage sale'' shall not be considered a ''fundraising activity,'' as that term is used in paragraph (3) of subdivision (a) of Section 214.

(c) The amendments made by the act adding this subdivision shall apply with respect to lien dates occurring on and after January 1, 2005.

SEC. 8. Section 17049 is added to the Revenue and Taxation Code, to read:

17049. (a) If an item of income was included in the California adjusted gross income of an individual for a preceding taxable year or years because it appeared that the individual had an unrestricted right to that item, and, based on the repayment of the item by the individual during the taxable year, that individual properly determines his or her federal income tax liability for the taxable year under Section 1341(a)(4) or (5) of the Internal Revenue Code, then the tax imposed by this chapter for the taxable year on that individual shall be an amount equal to (1) the tax for the taxable year computed without regard to this section, minus (2) the decrease in tax under this chapter for the preceding taxable year or years which would result solely from the exclusion of the item or portion thereof from the adjusted gross income required to be shown on the California return of that individual for the preceding taxable year or years. This section does not apply if the repayment is properly deductible in determining the individual's federal adjusted gross income for the taxable year, and that individual properly determines his or her federal

income tax liability for the taxable year under Section 1341(a)(4) of the Internal Revenue Code by deducting that repayment.

(b) In determining the decrease in tax under this chapter for the preceding taxable year or years that would result solely from the exclusion of the item or portion thereof from the California adjusted gross income of that individual for the preceding taxable year or years, any item excluded from the California adjusted gross income of an individual for a preceding year or years in which the individual was a nonresident individual or part-year resident individual, shall, to the extent that the item is derived from or connected with sources within this state, be excluded from California adjusted gross income derived from or connected with sources within this state for that preceding year or years.

(c) If the decrease in tax under this chapter for the preceding taxable year or years, that would result solely from the exclusion of the item or portion thereof from the adjusted gross income required to be shown on the California return of that individual for the preceding taxable year or years, exceeds the tax for the taxable year computed without regard to this section, that excess shall be considered to be a payment of tax on the last day prescribed for the payment of tax for the taxable year, and shall be refunded or credited in the same manner as if it were an overpayment for the taxable year.

SEC. 9. Section 17076 of the Revenue and Taxation Code is amended to read:

17076. (a) Section 67 of the Internal Revenue Code, relating to the 2-percent floor on miscellaneous itemized deductions, shall apply, except as otherwise provided.

(b) A deduction allowable under this part that exceeds three thousand dollars ($3,000) and is described in Section 17049, relating to computation of tax where taxpayer restores a substantial amount held under claim of right, may not be treated as a miscellaneous itemized deduction under Section 67 of the Internal Revenue Code, as applicable for purposes of this part.

SEC. 10. Section 19191 of the Revenue and Taxation Code is amended to read:

19191. (a) The Franchise Tax Board may enter into a voluntary disclosure agreement with any qualified entity, qualified shareholder, qualified member, or qualified beneficiary as defined in Section 19192, that is binding on both the Franchise Tax Board and the qualified entity, qualified shareholder, qualified member, or qualified beneficiary.

(b) The Franchise Tax Board shall do all of the following:

(1) Provide guidelines and establish procedures for qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries to apply for voluntary disclosure agreements.

(2) Accept applications on an anonymous basis from qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries for voluntary disclosure agreements.

(3) Implement procedures for accepting applications for voluntary disclosure agreements through the National Nexus Program administered by the Multistate Tax Commission.

(4) For purposes of considering offers from qualified entities and their qualified shareholders, qualified members, or qualified beneficiaries to enter into voluntary disclosure agreements, take into account the following criteria:

(A) The nature and magnitude of the qualified entity's previous presence and activity in this state and the facts and circumstances by which the nexus of the qualified entity or qualified shareholder, qualified member, or qualified beneficiary's was established.

(B) The extent to which the weight of the factual circumstances demonstrates that a prudent business person exercising reasonable care would conclude that the previous activities and presence in this state were or were not immune from taxation by this state by reason of Public Law 86-272 or otherwise.

(C) Reasonable reliance on the advice of a person in a fiduciary position or other competent advice that the qualified entity or qualified shareholder, qualified member, or qualified beneficiary activities were immune from taxation by this state.

(D) Lack of evidence of willful disregard or neglect of the tax laws of this state on the part of the qualified entity or qualified shareholder, qualified member, or qualified beneficiary.

(E) Demonstrations of good faith on the part of the qualified entity.

(F) Benefits that will accrue to the state by entering into a voluntary disclosure agreement.

(5) Act on any application of a voluntary disclosure agreement within 120 days of receipt.

(6) Enter into voluntary disclosure agreements with qualified entities, qualified shareholders, qualified members, or qualified beneficiaries, as authorized in subdivision (a) and based on the criteria set forth in paragraph (4).

(c) Before any voluntary disclosure agreement becomes binding, the Franchise Tax Board, itself, shall approve the agreement in the following manner:

(1) The Executive Officer and Chief Counsel of the Franchise Tax Board shall recommend and submit the voluntary disclosure agreement to the Franchise Tax Board for approval.

(2) Each voluntary disclosure agreement recommendation shall be submitted in a manner as to maintain the anonymity of the taxpayer applying for the voluntary disclosure agreement.

(3) Any recommendation for approval of a voluntary disclosure agreement shall be approved or disapproved by the Franchise Tax Board, itself, within 45 days of the submission of that recommendation to the board.

(4) Any recommendation of a voluntary disclosure agreement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved.

(5) Disapproval of a recommendation of a voluntary disclosure agreement shall be made only by a majority vote of the Franchise Tax Board.

(6) The members of the Franchise Tax Board shall not participate in any voluntary disclosure agreement except as provided in this subdivision.

(d) The voluntary disclosure agreement entered into by the Franchise Tax Board and the qualified entity, qualified shareholder, qualified member, or qualified beneficiary as provided for in subdivision (a) shall to the extent applicable specify that:

(1) The Franchise Tax Board shall with respect to a qualified entity, qualified shareholder, qualified member, or qualified beneficiary, except as provided in paragraph (4), (6), or (9) of subdivision (a) of Section 19192:

(A) Waive its authority under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) to assess or propose to assess taxes, additions to tax, fees, or penalties with respect to each taxable year ending prior to six years from the signing date of the voluntary disclosure agreement.

(B) With respect to each of the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement, based on its discretion, agree to waive any or all of the following:

(i) Any penalty related to a failure to make and file a return, as provided in Section 19131.

(ii) Any penalty related to a failure to pay any amount due by the date prescribed for payment, as provided in Section 19132.

(iii) Any addition to tax related to an underpayment of estimated tax, as provided in Section 19136.

(iv) Any penalty related to Section 6810 or subdivision (a) of Section 8810 of the Corporations Code, as provided in Section 19141.

(v) Any penalty related to a failure to furnish information or maintain records, as provided in Section 19141.5.

(vi) Any addition to tax related to an underpayment of tax imposed under Part 11 (commencing with Section 23001), as provided in Section 19142.

(vii) Any penalty related to a partnership required to file a return under Section 18633, as provided in Section 19172.

(viii) Any penalty related to a failure to file information returns, as provided in Section 19183.

(ix) Any penalty related to relief from contract voidability, as provided in Section 23305.1.

(2) The qualified entity, qualified shareholder, qualified member, or qualified beneficiary shall:

(A) With respect to each of the six taxable years ending immediately preceding the signing date of the written agreement:

(i) Voluntarily and fully disclose on the qualified entity's application all material facts pertinent to the qualified entity's, shareholder's, member's, or beneficiary's liability for any taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(ii) Except as provided in paragraph (3), within 30 days from the signing date of the voluntary disclosure agreement:

(I) File all returns required under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(II) Pay in full any tax, interest, fee, and penalties (other than those penalties specifically waived by the Franchise Tax Board under the terms of the voluntary disclosure agreement) imposed under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001) in a manner as may be prescribed by the Franchise Tax Board. Paragraph (1) of subdivision (f) of Section 25153 shall not apply to qualified entities admitted into the voluntary disclosure program.

(B) Agree to comply with all franchise and income tax laws of this state in subsequent taxable years by filing all returns required and paying all amounts due under this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23001).

(3) The Franchise Tax Board may extend the time for filing returns and paying amounts due to 120 days from the signing date of the voluntary disclosure agreement.

(e) The amendments to this section made by Chapter 954 of the Statutes of 1996 shall apply to taxable years beginning on or after January 1, 1997.

(f) The amendments to this section made by Chapter 543 of the Statutes of 2001 shall apply to voluntary disclosure agreements entered into on or after January 1, 2002.

(G) The amendments to this section made by the act adding this subdivision shall apply to voluntary disclosure agreements entered into on or after January 1, 2005.

SEC. 11. Section 19192 of the Revenue and Taxation Code is amended to read:

19192. For purposes of this article, the following terms have the following meanings:

(a) (1) ''Qualified entity'' means an entity that is all of the following:

(A) A corporation, as defined in Section 23038, a limited liability company, as defined in subdivision (d) of Section 17941, or a qualified trust, as defined in paragraph (7).

(B) An entity, including any predecessors to the entity, that previously has never filed a return with the Franchise Tax Board pursuant to this part, Part 10 (commencing with Section 17001), or Part 11 (commencing with Section 23011).

(C) An entity, including any predecessors to the entity, that previously has not been the subject of an inquiry by the Franchise Tax Board with respect to liability for any of the taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

(D) An entity that voluntarily comes forward prior to any unilateral contact from the Franchise Tax Board, makes application for a voluntary disclosure agreement in a form and manner prescribed by the Franchise Tax Board, and makes a full and accurate statement of its activities in this state for the six immediately preceding taxable years.

(2) (A) Notwithstanding paragraph (1), a qualified entity does not include any of the following:

(i) An entity that is organized and existing under the laws of this state.

(ii) An entity that is qualified or registered with the office of the Secretary of State.

(iii) An entity that maintains and staffs a permanent facility in this state.

(B) For purposes of this paragraph, the storing of materials, goods, or products in a public warehouse pursuant to a public warehouse contract does not constitute maintaining a permanent facility in this state.

(3) ''Qualified shareholder'' means an individual that is all of the following:

(A) A nonresident on the signing date of the voluntary disclosure agreement.

(B) A shareholder of an ''S'' corporation (defined in Section 23800) that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the shareholder's liability would be disclosed on that''S'' corporation's voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(4) Notwithstanding paragraph (3), subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any of the six taxable years immediately preceding the signing date that the qualified shareholder was a California resident required to file a California tax return, nor to any penalties or additions to tax attributable to income

other than the California source income from the ''S'' corporation that filed an application under this article.

(5) ''Qualified member'' means an individual, corporation, or limited liability company that is all of the following:

(A) (i) In the case of an individual, is a nonresident on the signing date of the voluntary disclosure agreement.

(ii) In the case of a corporation or limited liability company, is not either of the following:

(I) Organized under the laws of this state.

(II) Qualified or registered with the office of the Secretary of State.

(B) A member of a limited liability company that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the member's liability would be disclosed on that limited liability company's voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(6) Notwithstanding paragraph (5), in the case of a qualified member who is an individual, subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any of the six taxable years immediately preceding the signing date that the qualified member was a California resident required to file a California tax return, nor to any penalties or additions to tax attributable to income other than the California source income from the limited liability company that filed an application under this article.

(7) ''Qualified trust'' means a trust that meets both of the following:

(A) (i) The administration of the trust has never been performed in California.

(ii) For purposes of this subparagraph, administrative activities performed in California would be deemed to be performed outside of California if those activities were inconsequential to the overall administration of the trust.

(B) For six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement, the trust has had no resident beneficiaries (other than a beneficiary whose interest in that trust is contingent: a beneficiary's trust interest is not contingent if the trust has made any distribution to the resident beneficiary at any time during the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement).

(8) ''Qualified beneficiary'' means an individual who is all of the following:

(A) A nonresident on the signing date of the voluntary disclosure agreement and a nonresident during each of the six taxable years ending immediately preceding the signing date of the voluntary disclosure agreement.

(B) A beneficiary of a qualified trust that has applied for a voluntary disclosure agreement under this article under which all material facts pertinent to the beneficiary's liability would be disclosed on that trust's voluntary disclosure agreement as required under clause (i) of subparagraph (A) of paragraph (2) of subdivision (d) of Section 19191.

(9) Notwithstanding paragraph (8), subparagraph (B) of paragraph (1) of subdivision (d) of Section 19191 shall not apply to any penalties or additions to tax attributable to income other than income from the trust that filed an application under this article.

(b) ''Signing date'' of the voluntary disclosure agreement means the date on which a person duly authorized by the Franchise Tax Board signs the agreement.

(c) The amendments to this section made by Chapter 954 of the Statutes of 1996 shall apply to taxable years beginning on or after January 1, 1997.

(d) The amendments to this section made by Chapter 543 of the Statutes of 2001 shall apply to voluntary disclosure agreements entered into on or after January 1, 2002.

(e) The amendments to this section made by the act adding this subdivision shall apply to voluntary disclosure agreements entered into on or after January 1, 2005.

SEC. 12. Section 19194 of the Revenue and Taxation Code is amended to read:

19194. (a) Notwithstanding any other provision of this article, a voluntary disclosure agreement shall be null and void in the event that the Franchise Tax Board finds that with respect to the agreement any of the following circumstances exist:

(1) The qualified entity has misrepresented any material fact in applying for the voluntary disclosure agreement or in entering into the agreement.

(2) The qualified entity fails to file any returns for any taxable year covered by the voluntary disclosure period agreed upon on or before the due date prescribed under the terms of the agreement in accordance with paragraph (2) of subdivision (d) of Section 19191.

(3) (A) The qualified entity fails to pay in full any tax, fee, penalty, or interest due within the time prescribed under the terms of the voluntary disclosure agreement in accordance with paragraph (2) of subdivision (d) of Section 19191 or to pay any installments thereof due within the time prescribed under the terms of an installment payment arrangement in accordance with subparagraph (B).

(B) The Franchise Tax Board may enter into an installment payment arrangement, which shall include provisions for interest, in lieu of the full payment required under paragraph (2) of subdivision (d) of Section 19191. Failure by the qualified entity to comply with the terms of the

installment payment arrangement shall also render the voluntary disclosure arrangement null and void.

(4) The tax shown by the qualified entity on its tax return filed for any taxable year covered by the voluntary disclosure agreement, including any amount shown on a qualified amended return, as defined in Section 1.6664-2(c)(3) of Title 26 of the Code of Federal Regulations, understates by 10 percent or more the tax imposed under either Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001) and the qualified entity cannot demonstrate to the satisfaction of the Franchise Tax Board that a good-faith effort was made to accurately compute the tax.

(5) The qualified entity fails to begin to prospectively comply with all franchise and income tax laws of this state as agreed upon under the terms of the voluntary disclosure agreement in accordance with paragraph (2) of subdivision (d) of Section 19191.

(b) In the event that the Franchise Tax Board finds that the qualified entity has failed to comply under any of the circumstances which render the voluntary disclosure agreement null and void as set forth in subdivision (a), the limitation on assessment for any taxable years and the waiver of any penalties as provided for in paragraph (1) of subdivision (d) of Section 19191 shall not be binding on the Franchise Tax Board.

SEC. 13. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 355

An act to amend Sections 54975, 56036, 56077, 56132, 56337, 56375.5, 56810, 57025, 57120, 57125, and 57126 of the Government Code, and to amend Section 99 of the Revenue and Taxation Code, relating to local government reorganization.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 54975 of the Government Code is amended to read:

54975. (a) The board of supervisors shall include in the Local Appointments List prepared pursuant to Section 54972 all appointments of public members and alternate public members made to the local

agency formation commission pursuant to Chapter 2 (commencing with Section 56325) of Part 2 of Division 3.

(b) Whenever an unscheduled vacancy occurs in a local agency formation commission, the board of supervisors shall cause a special vacancy notice to be posted as provided in Section 54974. Final appointment to fill the vacancy may not be made by the appointing body for at least 10 working days after the posting of the notice.

SEC. 2. Section 56036 of the Government Code is amended to read:

56036. (a) ''District'' or ''special district'' means an agency of the state, formed pursuant to general law or special act, for the local performance of governmental or proprietary functions within limited boundaries. ''District'' or ''special district'' includes a county service area, but excludes all of the following:

(1) The state.

(2) A county.

(3) A city.

(4) A school district or a community college district.

(5) A special assessment district.

(6) An improvement district.

(7) A community facilities district formed pursuant to the Mello-Roos Community Facilities Act of 1982, Chapter 2.5 (commencing with Section 53311) of Part 1 of Division 2 of Title 5.

(8) A permanent road division formed pursuant to Article 3 (commencing with Section 1160) of Chapter 4 of Division 2 of the Streets and Highways Code.

(9) An air pollution control district or an air quality maintenance district.

(10) A zone of any of the following:

(A) A fire protection district.

(B) A mosquito abatement and vector control district.

(C) A public cemetery district.

(D) A recreation and park district.

(b) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a ''district'' or a ''special district'' for the purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a ''district'' or a ''special district:''

(A) A unified or union high school library district.

(B) A bridge and highway district.

(C) A joint highway district.

(D) A transit or rapid transit district.

(E) A metropolitan water district.

(F) A separation of grade district.

(2) Any proceedings pursuant to Part 4 (commencing with Section 57000) for a change of organization involving an entity described in paragraph (1) shall be conducted pursuant to the principal act authorizing the establishment of that entity.

(c) Except as otherwise provided in paragraph (1), each of the entities listed in paragraph (1) is a ''district'' or ''special district'' for purposes of this division.

(1) For the purposes of Chapter 1 (commencing with Section 57000) to Chapter 7 (commencing with Section 57175), inclusive, of Part 4 or Part 5 (commencing with Section 57300), none of the following entities is a ''district'' or ''special district'' if the commission of the principal county determines, in accordance with Sections 56127 and 56128, that the entity is not a ''district'' or ''special district.''

(A) A flood control district.

(B) A flood control and floodwater conservation district.

(C) A flood control and water conservation district.

(D) A conservation district.

(E) A water conservation district.

(F) A water replenishment district.

(G) The Orange County Water District.

(H) A California water storage district.

(I) A water agency.

(J) A county water authority or a water authority.

(2) If the commission determines that an entity described in paragraph (1) is not a ''district'' or ''special district,'' any proceedings pursuant to Part 4 (commencing with Section 57000) for a change of organization involving the entity shall be conducted pursuant to the principal act authorizing the establishment of that entity.

SEC. 3. Section 56077 of the Government Code is amended to read:

56077. ''Subject agency'' means each district or city for which a change of organization or reorganization is proposed or provided in a plan of reorganization.

SEC. 4. Section 56132 of the Government Code is amended to read:

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

If the commission adopts a resolution approving such a change of organization or reorganization, the board of commissioners of the

district may, within 15 days thereafter, adopt a resolution finding either that the proposed detachment may or will not adversely affect the district's ability to efficiently provide its law enforcement services in the remainder of the district. The district shall, if it adopts a resolution, file a certified copy of its resolution with the local agency to which the affected territory is proposed to be annexed and the commission. If that resolution finds that the proposed detachment may have an adverse financial effect, then the reorganization shall not become effective unless a majority of the voters voting at a special election of the district called for that purpose approve the detachment. The Broadmoor Police Protection District shall pay the costs of the election. For purposes of this section, it shall be conclusively presumed that any affected local agency that adopts a resolution under Section 56654 requesting a detachment of contiguous territory from the Broadmoor Police Protection District and that could have concurrently requested annexation of the affected territory, intends to do so.

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

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

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

SEC. 4.5. Section 56337 of the Government Code is amended to read:

56337. A city, county, or district officer may serve as a member of the commission while holding office as a city, county, or district officer. If a member who is a city, county, or district officer ceases to be an officer of a city, county, or district during his or her term, his or her membership on the commission shall be considered vacant.

SEC. 5. Section 56375.5 of the Government Code is amended to read:

56375.5. Every determination made by a commission regarding the matters provided for by subdivisions (a), (m), and (n) of Section 56375 and by subdivision (a) of Section 56375.3 shall be consistent with the spheres of influence of the local agencies affected by those determinations.

SEC. 6. Section 56810 of the Government Code is amended to read:

56810. (a) (1) If the proposal includes the incorporation of a city, as defined in Section 56043, the commission shall determine the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section and Section 56815.

(2) If the proposal includes the formation of a district, as defined in Section 2215 of the Revenue and Taxation Code, the commission shall determine the amount of property tax to be exchanged by the affected local agency pursuant to this section.

(b) The commission shall notify the county auditor of the proposal and the services which the new jurisdiction proposes to assume within the area, and identify for the auditor the existing service providers within the area subject to the proposal.

(c) If the proposal would not transfer all of an affected agency's service responsibilities to the proposed city or district, the commission and the county auditor shall do all of the following:

(1) The county auditor shall determine the proportion that the amount of property tax revenue derived by each affected local agency pursuant to subdivision (b) of Section 93 of the Revenue and Taxation Code bears to the total amount of revenue from all sources, available for general purposes, received by each affected local agency in the prior fiscal year. For purposes of making this determination and the determination required by paragraph (3), ''total amount of revenue from all sources available for general purposes'' means the total amount of revenue which an affected local agency may use on a discretionary basis for any purpose and does not include any of the following:

(A) Revenue which, by statute, is required to be used for a specific purpose.

(B) Revenue from fees, charges, or assessments which are levied to specifically offset the cost of particular services and do not exceed the cost reasonably borne in providing these services.

(C) Revenue received from the federal government which is required to be used for a specific purpose.

(2) The commission shall determine, based on information submitted by each affected local agency, an amount equal to the total net cost to each affected local agency during the prior fiscal year of providing those services which the new jurisdiction will assume within the area subject to the proposal. For purposes of this paragraph, ''total net cost'' means the total direct and indirect costs that were funded by general purpose revenues of the affected local agency and excludes any portion of the total cost that was funded by any revenues of that agency that are specified in subparagraphs (A), (B), and (C) of paragraph (1).

(3) The commission shall multiply the amount determined pursuant to paragraph (2) for each affected local agency by the corresponding proportion determined pursuant to paragraph (1) to derive the amount of

property tax revenue used to provide services by each affected local agency during the prior fiscal year within the area subject to the proposal. The county auditor shall adjust the amount described in the previous sentence by the annual tax increment according to the procedures set forth in Chapter 6 (commencing with Section 95) of Part 0.5 of Division 1 of the Revenue and Taxation Code, to the fiscal year in which the new city or district receives its initial allocation of property taxes.

(4) For purposes of this subdivision, in any county in which, prior to the adoption of Article XIII A of the California Constitution, and continuing thereafter, a separate fund or funds were established consisting of revenues derived from the unincorporated area of the county and from which fund or funds services rendered in the unincorporated area have been paid, the amount of property tax revenues derived pursuant to paragraph (3), may, at the discretion of the commission, be transferred to the proposed city over a period not to exceed 12 fiscal years following its incorporation. In determining whether the transfer of the amount of property tax revenues determined pursuant to paragraph (3) shall occur entirely within the fiscal year immediately following the incorporation of the proposed city or shall be phased in over a period not to exceed 12 full fiscal years following the incorporation, the commission shall consider each of the following:

(A) The total amount of revenue from all sources available to the proposed city.

(B) The fiscal impact of the proposed transfer on the transferring agency.

(C) Any other relevant facts which interested parties to the exchange may present to the commission in written form.

The decision of the commission shall be supported by written findings setting forth the basis for its decision.

(d) If the proposal would transfer all of an affected agency's service responsibilities to the proposed city or district, the commission shall request the auditor to determine the property tax revenue generated for the affected service providers by tax rate area, or portion thereof, and transmit that information to the commission.

(e) The executive officer shall notify the auditor of the amount determined pursuant to paragraph (3) of subdivision (c) or subdivision (d), as the case may be, and, where applicable, the period of time within which and the procedure by which the transfer of property tax revenues will be effected pursuant to paragraph (4) of subdivision (c), at the time the executive officer records a certificate of completion pursuant to Section 57203 for any proposal described in subdivision (a), and the auditor shall transfer that amount to the new jurisdiction.

(f) The amendments to this section enacted during the 1985–86 Regular Session of the Legislature shall apply to any proposal described

in subdivision (a) for which a certificate of completion is recorded with the county recorder on or after January 1, 1987.

(g) For purposes of this section, ''prior fiscal year'' means the most recent fiscal year for which data on actual direct and indirect costs and revenues needed to perform the calculations required by this section are available preceding the issuance of the certificate of filing.

(h) An action brought by a city or district to contest any determinations of the county auditor or the commission with regard to the amount of property tax revenue to be exchanged by the affected local agency pursuant to this section shall be commenced within three years of the effective date of the city's incorporation or the district's formation. These actions may be brought by any city that incorporated or by any district that formed on or after January 1, 1986.

(i) This section applies to any city that incorporated or district that formed on or after January 1, 1986.

(j) The calculations and procedures specified in this section shall be made prior to and shall be incorporated into the calculations specified in Section 56815.

SEC. 7. Section 57025 of the Government Code is amended to read:

57025. (a) The executive officer of the commission shall give notice of the protest hearing to be held on the proposal by publication pursuant to Sections 56153 and 56154 and by posting pursuant to Sections 56158 and 56159.

(b) The executive officer shall give mailed notice to all landowners owning land within any affected territory, consistent with Sections 56155 to 56157, inclusive.

(c) If the subject territory is inhabited, the executive officer shall also give mailed notice to all registered voters residing within any affected territory, consistent with Sections 56155 to 56157, inclusive.

(d) The executive officer shall also give mailed notice to each affected city, affected district, or affected county, the proponents, if any, and to persons requesting special notice, consistent with Sections 56155 to 56157, inclusive.

(e) In the case of a proposed change of organization or reorganization that would result in the extension of any previously authorized special tax or benefit assessment to the affected territory, the executive officer of the commission shall give mailed notice to each landowner within the affected territory.

SEC. 8. Section 57120 of the Government Code is amended to read:

57120. In addition to any other requirements, any resolution of the commission ordering a change of organization or reorganization that includes a formation or an incorporation subject to an election shall provide for the establishment of the appropriations limit determined pursuant to Section 56811 or 56812.

SEC. 9. Section 57125 of the Government Code is amended to read:

57125. (a) Special elections called within all or any part of a city or registered-voter district shall be governed by the general election provisions and the local election provisions of the Elections Code, so far as they may be applicable, relating to the qualifications of voters, the manner of voting, the form of the ballot, the duties of precinct and election officers, the canvassing of returns, and all other particulars. If the commission determines that there is any inconsistency:

(1) Between the general elections provisions and the local elections provisions of the Elections Code, the local elections provisions shall control.

(2) Between this division and the Elections Code, this division shall control.

(b) Notwithstanding any other provision of law, special elections pursuant to this division may be conducted wholly by mailed ballot on any date other than an established election date authorized by the elections official of the county or counties affected by the use of mailed ballots.

SEC. 10. Section 57126 of the Government Code is amended to read:

57126. (a) Special elections called within all or any part of a landowner-voter district shall be governed by the general elections provisions of the principal act, so far as they may be applicable, relating to the qualifications of voters, the manner of voting, the form of the ballot, the duties of precinct and election officers, the canvassing of returns, and all other particulars. To the extent of any inconsistency between the provisions of this division and the principal act as determined by the commission, the provisions of this division shall control.

(b) Notwithstanding any other provision of law, special elections held pursuant to this division may be conducted wholly by mailed ballot on any date other than an established election date authorized by the elections official of the county or counties affected by the use of mailed ballots.

SEC. 11. Section 99 of the Revenue and Taxation Code is amended to read:

99. (a) For the purposes of the computations required by this chapter:

(1) In the case of a jurisdictional change, other than a city incorporation or a formation of a district as defined in Section 2215, the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 96.1, or the annual tax increment determined pursuant to Section 96.5, for local agencies whose service area or service

responsibility would be altered by the jurisdictional change, as determined pursuant to subdivision (b) or (c).

(2) In the case of a city incorporation, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56810 of the Government Code and the adjustments in tax revenues that may occur pursuant to Section 56815 of the Government Code to the newly formed city or district and shall make the adjustment as determined by Section 56810 in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the incorporation.

(3) In the case of a formation of a district as defined in Section 2215, the auditor shall assign the allocation of property tax revenues determined pursuant to Section 56810 of the Government Code to the district and shall make the adjustment as determined by Section 56810 in the allocation of property tax revenue determined pursuant to Section 96 or 96.1 for each local agency whose service area or service responsibilities would be altered by the formation.

(b) Upon the filing of an application or a resolution pursuant to the Cortese-Knox-Hertzberg Local Government Reorganization Act of 2000 (Division 3 (commencing with Section 56000) of Title 5 of the Government Code), but prior to the issuance of a certificate of filing, the executive officer shall give notice of the filing to the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. This notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change.

(1) (A) The county assessor shall provide to the county auditor, within 30 days of the notice of filing, a report which identifies the assessed valuations for the territory subject to the jurisdictional change and the tax rate area or areas in which the territory exists.

(B) The auditor shall estimate the amount of property tax revenue generated within the territory that is the subject of the jurisdictional change during the current fiscal year.

(2) The auditor shall estimate what proportion of the property tax revenue determined pursuant to paragraph (1) is attributable to each local agency pursuant to Section 96.1 and Section 96.5.

(3) Within 45 days of notice of the filing of an application or resolution, the auditor shall notify the governing body of each local agency whose service area or service responsibility will be altered by the amount of, and allocation factors with respect to, property tax revenue estimated pursuant to paragraph (2) that is subject to a negotiated exchange.

(4) Upon receipt of the estimates pursuant to paragraph (3) the local agencies shall commence negotiations to determine the amount of

property tax revenues to be exchanged between and among the local agencies. This negotiation period shall not exceed 60 days.

The exchange may be limited to an exchange of property tax revenues from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years.

(5) In the event that a jurisdictional change would affect the service area or service responsibility of one or more special districts, the board of supervisors of the county or counties in which the districts are located shall, on behalf of the district or districts, negotiate any exchange of property tax revenues. Prior to entering into negotiation on behalf of a district for the exchange of property tax revenue, the board shall consult with the affected district. The consultation shall include, at a minimum, notification to each member and executive officer of the district board of the pending consultation and provision of adequate opportunity to comment on the negotiation.

(6) Notwithstanding any other provision of law, the executive officer shall not issue a certificate of filing pursuant to Section 56658 of the Government Code until the local agencies included in the property tax revenue exchange negotiation, within the 60-day negotiation period, present resolutions adopted by each such county and city whereby each county and city agrees to accept the exchange of property tax revenues.

(7) In the event that the commission modifies the proposal or its resolution of determination, any local agency whose service area or service responsibility would be altered by the proposed jurisdictional change may request, and the executive officer shall grant, 15 days for the affected agencies, pursuant to paragraph (4) to renegotiate an exchange of property tax revenues. Notwithstanding the time period specified in paragraph (4), if the resolutions required pursuant to paragraph (6) are not presented to the executive officer within the 15-day period, all proceedings of the jurisdictional change shall automatically be terminated.

(8) In the case of a jurisdictional change that consists of a city's qualified annexation of unincorporated territory, an exchange of property tax revenues between the city and the county shall be determined in accordance with subdivision (e) if that exchange of revenues is not otherwise determined pursuant to either of the following:

(A) Negotiations completed within the applicable period or periods as prescribed by this subdivision.

(B) A master property tax exchange agreement among those local agencies, as described in subdivision (d).

For purposes of this paragraph, a qualified annexation of unincorporated territory means an annexation, as so described, for which proceedings before the relevant local agency formation commission are initiated, as provided in Section 56651 of the Government Code, on or after January 1, 1998, and on or before January 1, 2005.

(9) No later than the date on which the certificate of completion of the jurisdictional change is recorded with the county recorder, the executive officer shall notify the auditor or auditors of the exchange of property tax revenues and the auditor or auditors shall make the appropriate adjustments as provided in subdivision (a).

(c) Whenever a jurisdictional change is not required to be reviewed and approved by a local agency formation commission, the local agencies whose service area or service responsibilities would be altered by the proposed change, shall give notice to the State Board of Equalization and the assessor and auditor of each county within which the territory subject to the jurisdictional change is located. This notice shall specify each local agency whose service area or responsibility will be altered by the jurisdictional change and request the auditor and assessor to make the determinations required pursuant to paragraphs (1) and (2) of subdivision (b). Upon notification by the auditor of the amount of, and allocation factors with respect to, property tax subject to exchange, the local agencies, pursuant to the provisions of paragraphs (4) and (6) of subdivision (b), shall determine the amount of property tax revenues to be exchanged between and among the local agencies. Notwithstanding any other provision of law, no such jurisdictional change shall become effective until each county and city included in these negotiations agrees, by resolution, to accept the negotiated exchange of property tax revenues. The exchange may be limited to an exchange of property tax revenue from the annual tax increment generated in the area subject to the jurisdictional change and attributable to the local agencies whose service area or service responsibilities will be altered by the proposed jurisdictional change. The final exchange resolution shall specify how the annual tax increment shall be allocated in future years. Upon the adoption of the resolutions required pursuant to this section, the adopting agencies shall notify the auditor who shall make the appropriate adjustments as provided in subdivision (a). Adjustments in property tax allocations made as the result of a city or library district withdrawing from a county free library system pursuant to Section 19116 of the Education Code shall be made pursuant to Section 19116 of the Education Code, and this subdivision shall not apply.

(d) With respect to adjustments in the allocation of property taxes pursuant to this section, a county and any local agency or agencies within the county may develop and adopt a master property tax transfer

agreement. The agreement may be revised from time to time by the parties subject to the agreement.

(e) (1) An exchange of property tax revenues that is required by paragraph (8) of subdivision (b) to be determined pursuant to this subdivision shall be determined in accordance with all of the following:

(A) The city and the county shall mutually select a third-party consultant to perform a comprehensive, independent fiscal analysis, funded in equal portions by the city and the county, that specifies estimates of all tax revenues that will be derived from the annexed territory and the costs of city and county services with respect to the annexed territory. The analysis shall be completed within a period not to exceed 30 days, and shall be based upon the general plan or adopted plans and policies of the annexing city and the intended uses for the annexed territory. If, upon the completion of the analysis period, no exchange of property tax revenues is agreed upon by the city and the county, subparagraph (B) shall apply.

(B) The city and the county shall mutually select a mediator, funded in equal portions by those agencies, to perform mediation for a period of not to exceed 30 days. If, upon the completion of the mediation period, no exchange of property tax revenues is agreed upon by the city and the county, subparagraph (C) shall apply.

(C) The city and the county shall mutually select an arbitrator, funded in equal portions by those agencies, to conduct an advisory arbitration with the city and the county for a period of not to exceed 30 days. At the conclusion of this arbitration period, the city and the county shall each present to the arbitrator its last and best offer with respect to the exchange of property tax revenues. The arbitrator shall select one of the offers and recommend that offer to the governing bodies of the city and the county. If the governing body of the city or the county rejects the recommended offer, it shall do so during a public hearing, and shall, at the conclusion of that hearing, make written findings of fact as to why the recommended offer was not accepted.

(2) Proceedings under this subdivision shall be concluded no more than 150 days after the auditor provides the notification pursuant to paragraph (3) of subdivision (b), unless one of the periods specified in this subdivision is extended by the mutual agreement of the city and the county. Notwithstanding any other provision of law, except for those conditions that are necessary to implement an exchange of property tax revenues determined pursuant to this subdivision, the local agency formation commission shall not impose any fiscal conditions upon a city's qualified annexation of unincorporated territory that is subject to this subdivision.

(f) Except as otherwise provided in subdivision (g), for the purpose of determining the amount of property tax to be allocated in the 1979–80

fiscal year and each fiscal year thereafter for those local agencies that were affected by a jurisdictional change which was filed with the State Board of Equalization after January 1, 1978, but on or before January 1, 1979. The local agencies shall determine by resolution the amount of property tax revenues to be exchanged between and among the affected agencies and notify the auditor of the determination.

(g) For the purpose of determining the amount of property tax to be allocated in the 1979–80 fiscal year and each fiscal year thereafter, for a city incorporation that was filed pursuant to Sections 54900 to 54904 after January 1, 1978, but on or before January 1, 1979, the amount of property tax revenue considered to have been received by the jurisdiction for the 1978–79 fiscal year shall be equal to two-thirds of the amount of property tax revenue projected in the final local agency formation commission staff report pertaining to the incorporation multiplied by the proportion that the total amount of property tax revenue received by all jurisdictions within the county for the 1978–79 fiscal year bears to the total amount of property tax revenue received by all jurisdictions within the county for the 1977–78 fiscal year. Except, however, in the event that the final commission report did not specify the amount of property tax revenue projected for that incorporation, the commission shall by October 10, determine pursuant to Section 54790.3 of the Government Code the amount of property tax to be transferred to the city.

The provisions of this subdivision shall also apply to the allocation of property taxes for the 1980–81 fiscal year and each fiscal year thereafter for incorporations approved by the voters in June 1979.

(h) For the purpose of the computations made pursuant to this section, in the case of a district formation that was filed pursuant to Sections 54900 to 54904, inclusive, of the Government Code after January 1, 1978, but before January 1, 1979, the amount of property tax to be allocated to the district for the 1979–80 fiscal year and each fiscal year thereafter shall be determined pursuant to Section 54790.3 of the Government Code.

(i) For the purposes of the computations required by this chapter, in the case of a jurisdictional change, other than a change requiring an adjustment by the auditor pursuant to subdivision (a), the auditor shall adjust the allocation of property tax revenue determined pursuant to Section 96 or 96.1 or its predecessor section, or the annual tax increment determined pursuant to Section 96.5 or its predecessor section, for each local school district, community college district, or county superintendent of schools whose service area or service responsibility would be altered by the jurisdictional change, as determined as follows:

(1) The governing body of each district, county superintendent of schools, or county whose service areas or service responsibilities would be altered by the change shall determine the amount of property tax

revenues to be exchanged between and among the affected jurisdictions. This determination shall be adopted by each affected jurisdiction by resolution. For the purpose of negotiation, the county auditor shall furnish the parties and the county board of education with an estimate of the property tax revenue subject to negotiation.

(2) In the event that the affected jurisdictions are unable to agree, within 60 days after the effective date of the jurisdictional change, and if all the jurisdictions are wholly within one county, the county board of education shall, by resolution, determine the amount of property tax revenue to be exchanged. If the jurisdictions are in more than one county, the State Board of Education shall, by resolution, within 60 days after the effective date of the jurisdictional change, determine the amount of property tax to be exchanged.

(3) Upon adoption of any resolution pursuant to this subdivision, the adopting jurisdictions or State Board of Education shall notify the county auditor who shall make the appropriate adjustments as provided in subdivision (a).

(j) For purposes of subdivision (i), the annexation by a community college district of territory within a county not previously served by a community college district is an alteration of service area. The community college district and the county shall negotiate the amount, if any, of property tax revenues to be exchanged. In these negotiations, there shall be taken into consideration the amount of revenue received from the timber yield tax and forest reserve receipts by the community college district in the area not previously served. In no event shall the property tax revenue to be exchanged exceed the amount of property tax revenue collected prior to the annexation for the purposes of paying tuition expenses of residents enrolled in the community college district, adjusted each year by the percentage change in population and the percentage change in the cost of living, or per capita personal income, whichever is lower, less the amount of revenue received by the community college district in the annexed area from the timber yield tax and forest reserve receipts.

(k) At any time after a jurisdictional change is effective, any of the local agencies party to the agreement to exchange property tax revenue may renegotiate the agreement with respect to the current fiscal year or subsequent fiscal years, subject to approval by all local agencies affected by the renegotiation.

SEC. 12. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one

million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 356

An act to amend Section 6001 of the Business and Professions Code, relating to attorneys.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 6001 of the Business and Professions Code is amended to read:

6001. The State Bar of California is a public corporation. It is hereinafter designated as the State Bar.

The State Bar has perpetual succession and a seal and it may sue and be sued. It may, for the purpose of carrying into effect and promoting its objectives:

(a) Make contracts.

(b) Borrow money, contract debts, issue bonds, notes and debentures and secure the payment or performance of its obligations.

(c) Own, hold, use, manage and deal in and with real and personal property.

(d) Construct, alter, maintain and repair buildings and other improvements to real property.

(e) Purchase, lease, obtain options upon, acquire by gift, bequest, devise or otherwise, any real or personal property or any interest therein.

(f) Sell, lease, exchange, convey, transfer, assign, encumber, pledge, dispose of any of its real or personal property or any interest therein, including without limitation all or any portion of its income or revenues from membership fees paid or payable by members.

(g) Do all other acts incidental to the foregoing or necessary or expedient for the administration of its affairs and the attainment of its purposes.

Pursuant to those powers enumerated in subdivisions (a) to (g), inclusive, it is recognized that the State Bar has authority to raise revenue in addition to that provided for in Section 6140 and other statutory provisions. The State Bar is empowered to raise that additional revenue by any lawful means, including, but not limited to, the creation of foundations or not-for-profit corporations.

The State Bar shall conspicuously publicize to its members in the annual dues statement and other appropriate communications, including its Web site and electronic communications, that its members have the right to limit the sale or disclosure of member information not reasonably related to regulatory purposes. In those communications the State Bar shall note the location of the State Bar's privacy policy, and shall also note the simple procedure by which a member may exercise his or her right to prohibit or restrict, at the member's option, the sale or disclosure of member information not reasonably related to regulatory purposes. On or before May 1, 2005, the State Bar shall report to the Assembly and Senate Committees on Judiciary regarding the procedures that it has in place to ensure that members can appropriately limit the use of their member information not reasonably related to regulatory purposes, and the number of members choosing to utilize these procedures.

No law of this state restricting, or prescribing a mode of procedure for the exercise of powers of state public bodies or state agencies, or classes thereof, including, but not by way of limitation, the provisions contained in Division 3 (commencing with Section 11000), Division 4 (commencing with Section 16100), and Part 1 (commencing with Section 18000) and Part 2 (commencing with Section 18500) of Division 5, of Title 2 of the Government Code, shall be applicable to the State Bar, unless the Legislature expressly so declares.

CHAPTER 357

An act to amend the heading of Chapter 8.9 (commencing with Section 10089.70) of Part 1 of Division 2 of, and to amend Sections 10089.70, 10089.71, 10089.72, 10089.79, 10089.80, 10089.82, and 10089.84 of, the Insurance Code, relating to homeowners' insurance, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. The heading of Chapter 8.9 (commencing with Section 10089.70) of Part 1 of Division 2 of the Insurance Code is amended to read:

CHAPTER 8.9. INSURANCE MEDIATION

SEC. 2. Section 10089.70 of the Insurance Code is amended to read:

10089.70. (a) The department shall establish a program for the mediation of the disputes between insured complainants and insurers arising out of the Northridge earthquake of 1994 or any subsequent earthquake, and disputes arising under automobile collision coverage or automobile physical damage coverage, in a policy as defined in Section 660. The program, with respect to the mediation of earthquake insurance claims, shall only apply to personal lines of insurance related to residential coverage. The goal of the program shall be to favorably resolve a statistically significant number of disputes sent to mediation under the program. This subdivision shall not apply to any dispute that turns on a question of major insurance coverage or a purely legal interpretation, or any dispute involving the actions of an agent or broker in which the insurer is not alleged to have been responsible for the conduct, or any complaint the commissioner finds to be frivolous, or any dispute in which a party is alleged to have committed fraud.

(b) The department shall also establish a program for the mediation of disputes arising from claims under policies between insured complainants and insurers regarding residential property insurance losses, other than earthquake losses, occurring after September 30, 2003, and for which the Governor has declared a state of emergency pursuant to Section 8558 of the Government Code. This subdivision shall not apply to any complaint that the commissioner finds to be frivolous, or any dispute that turns on a question of major insurance coverage or a purely legal interpretation, or any dispute involving the actions of an agent or broker in which the insurer is not alleged to have been responsible for the conduct, or any complaint the commissioner finds to be frivolous, or any dispute in which a party is alleged to have committed fraud. The department may refer to mediation any dispute covered by this subdivision in which the parties to the contract wish to discuss possible payments beyond policy limits.

SEC. 3. Section 10089.71 of the Insurance Code is amended to read:

10089.71. Any insured having a dispute with an insurer under a policy that qualifies for this program may file a written complaint with the department. The complaint shall indicate that the complainant has not been able to reach a satisfactory settlement of a claim with the insurer. The department shall, if deemed appropriate, notify the insurer against whom the complaint is made of the nature of the complaint, may request appropriate relief for the complainant, and may meet and confer with the complainant and the insurer in order to attempt resolution of the dispute.

SEC. 4. Section 10089.72 of the Insurance Code is amended to read:

10089.72. (a) If, after the department's intervention, the insurer and the insured do not reach agreement, the department may notify the insurer that in order to avoid referral to mediation, the insurer shall have 28 calendar days to resolve the dispute, unless the department, for good cause, extends the period by an additional 7 calendar days.

(b) The department may not refer a claim or dispute to mediation unless the amount claimed by the insured exceeds seven thousand five hundred dollars ($7,500) and the amount in dispute exceeds two thousand dollars ($2,000).

SEC. 5. Section 10089.79 of the Insurance Code is amended to read:

10089.79. (a) The costs of mediation shall be reasonable, and shall be borne by the insurer, except as provided in Section 10089.81. The commissioner may set a fee not to exceed seven hundred dollars ($700) for each dispute mediated pursuant to subdivision (a) of Section 10089.70, and one thousand five hundred dollars ($1,500) for each dispute mediated pursuant to subdivision (b) of that section.

(b) The administrative expenses for the mediation program shall be paid from existing resources available to the department. If additional resources are required by the department, those resources shall be made available by an annual appropriation in the Budget Act.

SEC. 6. Section 10089.80 of the Insurance Code is amended to read:

10089.80. (a) The representatives of the insurer shall know the facts of the case and be familiar with the allegations of the complainant. The insurer or the insurer's representative shall produce at the settlement conference a copy of the policy and all documents from the claims file relevant to the degree of loss, value of the claim, and the fact or extent of damage. For disputes mediated pursuant to subdivision (b) of Section 10089.70, the department shall refer to mediation issues related to the settlement of the claim. The insured and insurer shall produce, to the extent available, documents relevant to the successful mediation of the claim, including documents related to the degree of loss, the value of the claim, and the fact or extent of damage.

The mediator may also order production of other documents that the mediator determines to be relevant to the issues under mediation. If a party declines to comply with that order, the mediator may appeal to the commissioner for a determination of whether the documents requested should be produced. The commissioner shall make a determination within 21 days. However, the party ordered to produce the documents shall not be required to produce while the issue is before the commissioner in this 21-day period. If the ruling is in favor of production, any insurer that is subject to an order to participate in mediation issued under subdivision (a) of Section 10089.75 shall comply with the order to produce. Insureds, and those insurers that are not subject to an order to participate in mediation, shall produce the

documents or decline to participate further in the mediation after a ruling by the commissioner requiring the production of those other documents. Declination of mediation by the insurer under this section may be considered by the commissioner in exercising authority under subdivision (a) of Section 10089.75.

The mediator shall have the authority to protect from disclosure information that the mediator determines to be privileged, including, but not limited to, information protected by the attorney-client or work-product privileges, or to be otherwise confidential.

(b) The mediator shall determine prior to the mediation conference whether the insured will be represented by counsel at the mediation. The mediator shall inform the insurer whether the insured will be represented by counsel at the mediation conference. If the insured is represented by counsel at the mediation conference, the insurer's counsel may be present. If the insured is not represented by counsel at the mediation conference, then no counsel may be present.

(c) Section 703.5 and Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code apply to a mediation conducted under this chapter.

(d) The statements made by the parties, negotiations between the parties, and documents produced at the mediation are confidential. However, this confidentiality shall not restrict the access of the department to documents or other information the department seeks in order to evaluate the mediation program or to comply with reporting requirements. This subdivision does not affect the discoverability or admissibility of documents that are otherwise discoverable or admissible.

SEC. 7. Section 10089.82 of the Insurance Code is amended to read:

10089.82. (a) An insured may not be required to use the department's mediation process. An insurer may not be required to use the department's mediation process, except as provided in Section 10089.75.

(b) Neither the insurer nor the insured is required to accept an agreement proposed during the mediation.

(c) If the parties agree to a settlement agreement, the insured will have three business days to rescind the agreement. Notwithstanding Chapter 2 (commencing with Section 1115) of Division 9 of the Evidence Code, if the insured rescinds the agreement, it may not be admitted in evidence or disclosed unless the insured and all other parties to the agreement expressly agree to its disclosure. If the agreement is not rescinded by the insured, it is binding on the insured and the insurer, and acts as a release of all specific claims for damages known at the time of the mediation presented and agreed upon in the mediation conference. If counsel for the insured is present at the mediation conference and a settlement is

agreed upon that is signed by the insured's counsel, the agreement is immediately binding on the insured and may not be rescinded.

(d) This section does not affect rights under existing law for claims for damage that were undetected at the time of the settlement conference.

(e) All settlements reached as a result of department-referred mediation shall address only those issues raised for the purpose of resolution. Settlements and any accompanying releases are not effective to settle or resolve any claim or dispute not addressed by the mediator for the purpose of resolution, nor any claim that the insured may have related to the insurer's conduct in handling the claim. However, for mediations conducted pursuant to subdivision (b) of Section 10089.70, the insurer and insured may agree to a complete settlement and release of all disputes related to the claim, including any claim the insured may have related to the insurer's conduct in handling the claim, provided the legal effect of the release is disclosed and fully explained to the claimant by the mediator.

Referral to mediation or the pendency of a mediation under this article is not a basis to prevent or stay the filing of civil litigation arising in whole or in part out of the same facts. Any applicable statute of limitations is tolled for the number of days beginning from the notification date to the insurer pursuant to Section 10089.72, until the date on which the mediation is either completed or declined, or the date on which the insured fails to appear for a scheduled mediation for the second time, or, in the event that a settlement is completed, the expiration of any applicable three business day cooling off period.

SEC. 8. Section 10089.84 of the Insurance Code is amended to read:

10089.84. This chapter shall remain in effect 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. The department shall not refer to mediation any case that arises from a claim under earthquake or automobile coverage when that claim is made to an insurer on or after January 1, 2006, unless a later enacted statute, which is enacted before January 1, 2006, deletes or extends that date, but any case arising from a claim for earthquake or automobile coverage received prior to January 1, 2006, may be mediated beyond that date. Any case arising from fire damage and covered under a policy of homeowners' insurance that is referred to mediation by the department prior to January 1, 2008, shall be mediated under this chapter whether or not the mediation has been completed prior to January 1, 2008. No later than October 1, 2004, the commissioner shall report to the Governor and to the Legislature on whether the program of mediating earthquake and auto damage claims should be extended, expanded, terminated, or otherwise modified, and shall include specific findings regarding the use of the program by insureds and insurers.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to allow victims of disasters to resolve disputes over claims and thereby recover from their losses, it is necessary that this act take effect immediately.

CHAPTER 358

An act to amend Sections 8212 and 8226 of the Education Code, and to amend Section 1596.853 of, and to add Sections 1596.773 and 1596.8555 to, the Health and Safety Code, relating to child care.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 8212 of the Education Code is amended to read:

8212. For purposes of this article, child care resource and referral programs, established to serve a defined geographic area, shall provide the following services:

(a) Identification of the full range of existing child care services through information provided by all relevant public and private agencies in the areas of service, and the development of a resource file of those services which shall be maintained and updated at least quarterly. These services shall include, but not be limited to, family day care homes, public and private day care programs, full-time and part-time programs, and infant, preschool, and extended care programs.

The resource file shall include, but not be limited to, the following information:

(1) Type of program.

(2) Hours of service.

(3) Ages of children served.

(4) Fees and eligibility for services.

(5) Significant program information.

(b) (1) Establishment of a referral process which responds to parental need for information and which is provided with full recognition of the confidentiality rights of parents. Resource and referral programs shall make referrals to licensed child day care facilities. Referrals shall be made to unlicensed care facilities only if there is no requirement that the

facility be licensed. The referral process shall afford parents maximum access to all referral information. This access shall include, but is not limited to, telephone referrals to be made available for at least 30 hours per week as part of a full week of operation. Every effort shall be made to reach all parents within the defined geographic area, including, but not limited to, any of the following:

(A) Toll-free telephone lines.

(B) Office space convenient to parents and providers.

(C) Referrals in languages which are spoken in the community.

Each child care resource and referral program shall publicize its services through all available media sources, agencies, and other appropriate methods.

(2) (A) Provision of information to any person who requests a child care referral of his or her right to view the licensing information of a licensed child day care facility required to be maintained at the facility pursuant to Section 1596.859 of the Health and Safety Code and to access any public files pertaining to the facility that are maintained by the State Department of Social Services Community Care Licensing Division.

(B) A written or oral advisement in substantially the following form will comply with the requirements of subparagraph (A):

''State law requires licensed child day care facilities to make accessible to the public a copy of any licensing report pertaining to the facility that documents a facility visit or a substantiated complaint investigation. In addition, a more complete file regarding a child care licensee may be available at an office of the State Department of Social Services Community Care Licensing Division. You have the right to access any public information in these files.''

(c) Maintenance of ongoing documentation of requests for service tabulated through the internal referral process. The following documentation of requests for service shall be maintained by all child care resource and referral programs:

(1) Number of calls and contacts to the child care information and referral program or component.

(2) Ages of children served.

(3) Time category of child care request for each child.

(4) Special time category, such as nights, weekends, and swing shift.

(5) Reason that the child care is needed.

This information shall be maintained in a manner that is easily accessible for dissemination purposes.

(d) Provision of technical assistance to existing and potential providers of all types of child care services. This assistance shall include, but not be limited to:

(1) Information on all aspects of initiating new child care services including, but not limited to, licensing, zoning, program and budget development, and assistance in finding this information from other sources.

(2) Information and resources that help existing child care services providers to maximize their ability to serve the children and parents of their community.

(3) Dissemination of information on current public issues affecting the local and state delivery of child care services.

(4) Facilitation of communication between existing child care and child-related services providers in the community served.

Services prescribed by this section shall be provided in order to maximize parental choice in the selection of child care to facilitate the maintenance and development of child care services and resources.

(e) (1) A program operating pursuant to this article within two business days of receiving notice shall remove a licensed child day care facility with a revocation or a temporary suspension order, or that is on probation from the program's referral list.

(2) A program operating pursuant to this article within two business days of receiving notice shall notify all entities, operating a program under Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350) in the program's jurisdiction, of a licensed child day care facility with a revocation or a temporary suspension order, or that is on probation.

(3) Once a program operating pursuant to this article notifies an entity operating a program under Article 3 (commencing with Section 8220) and Article 15.5 (commencing with Section 8350) of a revocation or a temporary suspension order, the entity, within two business days, shall do both of the following concurrently:

(A) Terminate payment to the licensed child day care facility.

(B) Notify the parents and the licensed child day care facility in writing that payment has been terminated and the reason for the termination.

(4) Once a program operating pursuant to this article notifies an entity operating a program under Article 3 (commencing with Section 8220) or Article 15.5 (commencing with Section 8350) of a probation, that entity shall provide written notice to the parents utilizing the provider that the provider has been placed on probation and that the parents have an option to locate alternate child day care arrangements or shall remain with the provider without risk of subsidy payments to the provider being terminated. A program operating pursuant to this section is urged, to the extent feasible, to provide the written notice required by this paragraph in the primary language of the parent.

SEC. 2. Section 8226 of the Education Code is amended to read:

8226. (a) When making referrals, every program operating pursuant to this article shall provide information to any person who requests a child care referral of his or her right to view the licensing information of a licensed child day care facility required to be maintained at the facility pursuant to Section 1596.859 of the Health and Safety Code and to access any public files pertaining to the facility that are maintained by the State Department of Social Services Community Care Licensing Division.

(b) A written or oral advisement in substantially the following form will comply with the requirements of subdivision (a):

''State law requires licensed child day care facilities to make accessible to the public a copy of any licensing report pertaining to the facility that documents a facility visit or a substantiated complaint investigation. In addition, a more complete file regarding a child care licensee may be available at an office of the State Department of Social Services Community Care Licensing Division. You have the right to access any public information in these files.''

(c) Every program operating pursuant to this article, within two days of receiving notice, shall remove from the program's referral list the name of any licensed child day care facility with a revocation or a temporary suspension order or that is on probation.

SEC. 3. Section 1596.773 is added to the Health and Safety Code, to read:

1596.773. (a) ''Probation'' means the period of time that a licensed child day care facility is required to comply with specific terms and conditions set forth by the department in order to stay or postpone the revocation of the facility's license.

(b) ''Revocation'' means an administrative action taken by the department to void or rescind the license of a child day care facility because of serious or chronic violations of licensing laws or regulations by the facility.

SEC. 4. Section 1596.853 of the Health and Safety Code is amended to read:

1596.853. (a) Any person may request an inspection of any child day care facility in accordance with the California Child Day Care Facilities Act by transmitting to the department notice of an alleged violation of applicable requirements prescribed by the statutes or regulations of this state. A complaint may be made either orally or in writing.

(b) The substance of the complaint shall be provided to the licensee no earlier than at the time of the inspection. Unless the complainant specifically requests otherwise, neither the substance of the complaint provided the licensee nor any copy of the complaint or any record published, released, or otherwise made available to the licensee shall

disclose the name of any person mentioned in the complaint, except the name of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection pursuant to this chapter.

(c) Upon receipt of a complaint, the department shall make a preliminary review and, unless the department determines that the complaint is willfully intended to harass a licensee or is without any reasonable basis, the department shall make an onsite inspection within 10 days after receiving the complaint, except where the visit would adversely affect the licensing investigation or the investigation of other agencies, including, but not limited to, law enforcement agencies. In either event, the complainant shall be promptly informed of the department's proposed course of action.

If the department determines that the complaint is without a reasonable basis, then the complaint shall be marked confidential and shall not be disclosed to the public. The child-care provider shall be notified in writing within 30 days of the dismissal that the complaint has been dismissed.

(d) (1) The department shall notify a resource and referral program funded under Section 8210 of the Education Code, as follows:

(A) Upon the issuance or denial of a license for a child day care facility within the resource and referral program's jurisdiction.

(B) Within one business day of a finding that physical or sexual abuse has occurred at a child day care facility within the resource and referral program's jurisdiction.

(C) Within two business days of the issuance of a temporary suspension order, or the revocation or placement on probation of a license for a child day care facility within the resource and referral program's jurisdiction.

(D) The department shall also notify the resource and referral program of the final resolution of any action specified in this paragraph.

(2) With the exception of parents seeking local day care service, any other entity specified in subdivision (b) of Section 1596.86 may request that the department provide the notification described in paragraph (1).

(e) When the department substantiates an allegation that it deems to be serious in a facility funded by the Child Development Division of the State Department of Education pursuant to Chapter 2 (commencing with Section 8200) of Part 6 of the Education Code it shall notify the Child Development Division.

SEC. 5. Section 1596.8555 is added to the Health and Safety Code, to read:

1596.8555. A licensed child day care facility shall post its license in a prominent, publicly accessible location in the facility. A family day

care home shall comply with this posting requirement during the hours when clients are present.

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 359

An act to add Article 7 (commencing with Section 999.50) to Chapter 6 of Division 4 of the Military and Veterans Code, relating to veterans.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Article 7 (commencing with Section 999.50) is added to Chapter 6 of Division 4 of the Military and Veterans Code, to read:

Article 7. Contracts with Nonprofit Veteran Service Agencies

999.50. It is the intent of the Legislature in enacting this article to encourage state agencies, cities, counties, districts, and other political subdivisions to purchase goods manufactured by, and services provided by, a nonprofit veteran service agency whenever it is both feasible to do so and the location of the nonprofit veteran service agency makes the purchases reasonably convenient.

999.51. (a) A nonprofit veteran service agency shall be eligible for certification as a small business under the Small Business Procurement and Contract Act, as described in Chapter 6.5 (commencing with Section 14835) of Part 5.5 of Division 3 of Title 2 of the Government Code, and may be granted a small business bid preference if it meets all of the following conditions:

(1) The goods or services meet the specifications and needs of the purchasing agency.

(2) The goods or services are purchased at a fair and reasonable price, as determined by the appropriate state or local agency.

(3) The nonprofit veteran service agency complies with all of the following requirements:

(A) The nonprofit veteran service agency shall employ veterans receiving services from the nonprofit veteran service agency for not less than 75 percent of the person-hours of direct labor required for the production of goods and the provision of services performed pursuant to a contract under this section.

(B) The nonprofit veteran service agency agrees to make those elections permitted of any nonprofit corporation under the Federal Insurance Contributions Act (26 U.S.C. Sec. 3103 et seq.) and the Unemployment Insurance Code in order to provide social security and unemployment and disability benefits for its employees, commencing with its first contract or purchase order under this section and continuing thereafter. In the event that the nonprofit veteran service agency ceases to provide those benefits, any existing contract or purchase order under this section with the nonprofit veteran service agency is terminated and no further contracts or purchase orders shall be awarded to that nonprofit veteran service agency for the period of two years after the nonprofit veteran service agency ceases to provide the benefits.

(C) The nonprofit veteran service agency does not commit any unfair labor practices, as defined in the National Labor Relations Act, at Section 158 of Title 29 of the United States Code.

(D) The nonprofit veteran service agency abides by the provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Sec. 201 et seq.), the Walsh-Healy Public Contract Act (41 U.S.C. Sec. 35 et seq.), and the regulations of the Department of Industrial Relations (8 Cal. Code Regs. 1 et seq.).

(b) For purposes of this section:

(1) ''Nonprofit veteran service agency'' means a community-based organization that meets the following requirements:

(A) It is exempt from tax under Section 501(c)(3) of the Internal Revenue Code.

(B) Its principal purpose is to provide housing, substance abuse, case management, and employment training services for low-income veterans, disabled veterans, or homeless veterans and their families.

(2) ''Direct labor'' includes all work required for preparation, processing, and packing of a good, or work directly relating to the performance of a service, excluding supervision, administration, inspection, and shipping.

(3) A veteran receiving services from the nonprofit veteran service agency shall be considered an employee when performing productive work.

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CHAPTER 360

An act to amend Section 12104 of the Financial Code, relating to check sellers and prorators.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 12104 of the Financial Code is amended to read:

12104. A nonprofit community service organization that meets all of the following criteria shall be exempt from any requirements imposed on prorators pursuant to this division:

(a) The nonprofit community service organization incorporates in this state or any other state as a nonprofit corporation and operates pursuant to either the Nonprofit Public Benefit Corporation Law, Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code or the Nonprofit Mutual Benefit Corporation Law, Part 3 (commencing with Section 7110) of Division 2 of Title 1 of the Corporations Code.

(b) The nonprofit community service organization limits its membership to retailers, lenders in the consumer credit field, educators, attorneys, social service organizations, employer and employee organizations, and related groups that serve educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes.

(c) The nonprofit community service organization has as its principal functions the following:

(1) Consumer credit education.

(2) Counseling on consumer credit problems and family budgets.

(3) Arranging or administering debt management plans. ''Debt management plan'' means a method of paying debtor's obligations in installments on a monthly basis.

(4) Arranging or administering debt settlement plans. ''Debt settlement plans'' means a method of paying debtor's obligations in a negotiated amount to each creditor on a one-time basis.

(d) The nonprofit community service organization receives from a debtor no more than the following maximum amounts to offset the organization's actual and necessary expenses for the services described in subdivision (c): a one-time sum not to exceed fifty dollars ($50) for education and counseling combined in connection with debt management or debt settlement services; and for debt management plans, a sum not to exceed 8 percent of the money disbursed monthly, or thirty-five dollars ($35) per month, whichever is less, and for debt

settlement plans a sum not to exceed 15 percent of the amount of the debt forgiven for negotiated debt settlement plans. Nonprofit community service organizations shall not require any upfront payments or deposits on debt settlement plans and may only require payment of fees once the debt has been successfully settled. For purposes of this subdivision, a household shall be considered one debtor. The fees allowed pursuant to this subdivision shall be the only fees that may be charged by a nonprofit community service organization for any services related to a debt management plan or a debt settlement plan.

(e) The nonprofit community service organization maintains and keeps current and accurate books, records, and accounts relating to its business in accordance with generally accepted accounting principles, and stores them in a readily accessible place for a period of no less than five years from the end of the fiscal year in which any transactions occurred.

(f) The nonprofit community service organization deposits any money received from a debtor for the services described in subdivision (c) in a noninterest-bearing trust account in a federally insured state or federal bank, savings bank, savings and loan association, or credit union, which account is maintained specifically for purposes of administering a debt management plan or debt settlement plan. The nonprofit community service organization shall provide the commissioner the following prior to engaging in business in this state and claiming this exemption:

(1) A written notice with the name, address, and telephone number of the bank, savings bank, savings and loan association, or credit union where the trust account is maintained, and the name of the account and the account number. The account information required in this paragraph shall be kept confidential pursuant to the laws governing disclosure of public records, including the California Public Records Act, Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code, and the rules adopted thereunder.

(2) An irrevocable written consent providing that upon the commissioner taking possession of the property and business of the nonprofit community service organization, all books, records, property and business, including trust accounts and any other accounts holding debtors' funds, shall be immediately turned over to the commissioner or receiver appointed pursuant to this division. The consent shall be signed by the nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union where the trust account is maintained. The consent shall be binding upon the nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union, and any objection to it must be raised pursuant to the laws of the State of California and only in the forum in

which the proceeding to take possession or appointment of the receiver has been filed. The nonprofit community service organization and the bank, savings bank, savings and loan association, or credit union shall further consent to the jurisdiction of the commissioner for the purpose of any investigation or proceeding under Sections 12105 and 12106 or any other provision of this division. The consent required by this paragraph shall include the name, title, and signature of an official of the bank, savings bank, savings and loan association, or credit union holding the authority to consent on behalf of that institution, and the name, title, and signature of the chief executive officer or president of the nonprofit community service organization.

(g) The nonprofit community service organization maintains at all times a surety bond in the amount of twenty-five thousand dollars ($25,000), issued by an insurer licensed in this state. The bond shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of Section 12104 of the Financial Code, honestly and faithfully applying all funds received, honestly and faithfully performing all obligations and undertakings required under this section, and paying to the state and to any person all money that becomes due and owing to the state or to any person owed by the obligor of the bond.

(h) The nonprofit community service organization reports all of the following to the debtor at least once every three months, or upon the debtor's request, for any debt management plan or debt settlement plan:

(1) Total amount received from the debtor.

(2) Total amount paid to each creditor.

(3) Total amount any creditor has agreed to accept as payment in full on any debt owed by the debtor.

(4) Any amount paid to the organization by the debtor.

(5) Any amount held in reserve.

(i) The nonprofit community service organization submits to the commissioner, at the organization's expense, an audit report containing audited financial statements covering the calendar year or, if the organization has an established fiscal year, then for that fiscal year, within 120 days after the close of the calendar or fiscal year.

(j) The nonprofit community service organization submits with the annual financial statements required under subdivision (i) a declaration that conforms to Section 2015.5 of the Code of Civil Procedure, is executed by an official authorized by the board of the organization, and that states that the organization complies with this section. The annual financial statements shall also include a separate written statement that identifies the name, address, contact person, and telephone number of the organization.

(k) The nonprofit community service organization maintains accreditation by an independent accrediting organization, including

either the Council on Accreditation or the International Standards Organization, with sector certification.

(*l*) The nonprofit community service organization does not engage in any act or practice in violation of Section 17200 or 17500 of the Business and Professions Code.

(m) The nonprofit community service organization inserts the following statement, in not less than 10-point type, in its debt management plan and debt settlement plan agreements: ''Complaints related to this agreement may be directed to the California Department of Corporations. This nonprofit community service organization has adopted best practices for debt management plans and debt settlement plans, and a copy will be provided upon request.''

(n) The nonprofit community service organization adopts and implements on a continuous basis policies or procedures of best practices that are designed to prevent improper debt management or debt settlement practices and prevent theft and misappropriation of funds. Failure to do the following shall constitute improper debt management or debt settlement practices, as applicable:

(1) Obtain counselor certification conducted by a nationally recognized third-party certification program that certifies that all of the agency's counselors receive proper training and are qualified to provide financial assistance prior to performing counseling services in this state.

(2) Disburse funds no later than 15 days after receipt of valid funds, or by a scheduled disbursement date, whichever is the greater amount of time.

(3) Transmit funds utilizing electronic payment processing when available.

(4) Implement an inception date policy, which shall include an agreement that a consumer's first disbursement pursuant to a debt management plan shall be received within 90 days of agreeing to the debt management plan service. The debt management plan shall include all items described in subdivision (h) and shall be provided to the consumer at the inception date of the plan. A description of best practices of the agency and of the consumer complaint resources shall be issued no later than the first payment date.

(5) Respond to and research any complaint initiated by a consumer within five business days of receipt of the complaint.

(6) Prohibit a policy requiring debt management plan consumers from being required to utilize additional ancillary services.

(7) Provide consumer access to debt management plan services regardless of the consumer's ability to pay fees related to the debt management plan, lack of creditor participation, or the amount of the consumer's outstanding debt.

(8) Implement policies that specifically prohibit credit counselors from receiving financial incentives or additional compensation based on the outcome of the counseling process.

(9) Prohibit the practice of paying referral fees to consumers or other third parties who refer new clients to the agency.

(10) Disclose in all written contracts with consumers the portion of funding for the agency that is provided by creditors.

(11) Disclose in all written contracts for debt management plans or debt settlement plans that these plans are not suitable for all consumers and that consumers may request information on other options, including, but not limited to, bankruptcy.

(12) Fully disclose all services to be provided by the agency and any initial and ongoing fees to be charged by the agency for services, including, but not limited to, contributions to the agency.

(13) Prohibit the agency or any affiliate of the agency from purchasing debt from a consumer.

(14) Prohibit the agency from offering loans to consumers involving the charging of interest.

(15) Prominently disclose in written contracts with consumers of any financial arrangement between the agency and any lender or any provider of financial services if the agency receives any form of compensation for referring consumers to that lender or provider of financial services.

(16) Provide professional liability insurance coverage.

(17) Provide the debtor a written individualized evaluation of his or her financial status and an initial debt management plan for the debtor's debts with specific recommendations regarding actions the debtor should take.

(18) Provide the debtor enrolling in a debt management plan a written reliable estimate of the length of time it will take to complete the plan and identifies the total debt owed to each creditor included in the plan, the proposed payment to each creditor, and any fees that would be charged for administering the plan. The estimate shall be provided prior to receipt of the debtor's first deposit.

(o) The nonprofit community service organization provides a copy of the best practices described in subdivision (n) to its debtor, upon request.

(p) The nonprofit community service organization resolves in a prompt and reasonable manner complaints from debtors relating to the organization's debt management plans or debt settlement plans.

(q) The nonprofit community service organization provides written notice to the commissioner within 30 days of dissolution or termination of engaging in the activities of a prorater, as defined in Section 12002.1.

(r) This section shall become inoperative upon the enactment of a statute requiring the licensure and regulation of nonprofit community service organizations providing consumer credit counseling.

CHAPTER 361

An act to amend Section 2 of Chapter 317 of the Statutes of 1997, to add Sections 4.5 and 5.5 to Chapter 74 of the Statutes of 1978, and to add Sections 2 and 3 to Chapter 526 of the Statutes of 1919, relating to public trust lands.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

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

(a) Subdivision (h) of Section 1 of Chapter 415 of the Statutes of 1975 directed the County of Orange and the State Lands Commission to provide certain described lands in Upper Newport Bay to the Department of Fish and Game for the establishment, improvement and conduct of an ecological reserve, or wildlife refuge, or both, and other compatible uses.

(b) Subdivision (h) of Section 1 of Chapter 74 of the Statutes of 1978 authorized the City of Newport Beach to transfer portions of the lands conveyed to it by that act to the State Lands Commission for lease to the Department of Fish and Game for an ecological reserve or wildlife refuge, or both, and other compatible uses to be undertaken by the department. Subdivision (c) of Section 2 of Chapter 74 of the Statutes of 1978 further authorized the City of Newport Beach to acquire real property for purposes of enhancing lands administered by the Department of Fish and Game pursuant to Chapter 415 of the Statutes of 1975.

(c) The Upper Newport Bay Ecological Reserve has been established as an ecological reserve under the provisions of Article 4 (commencing with Section 1580) of Chapter 5 of Division 2 of the Fish and Game Code.

(d) Chapter 715 of the Statutes of 1984 authorizes the County of Orange and the City of Newport Beach to expend revenues from leases of certain described tide and submerged lands surrounding Harbor Island in Lower Newport Bay for purposes of enhancing the Upper Newport Bay Ecological Reserve.

(e) Section 2 of Chapter 317 of the Statutes of 1997 directed the City of Newport Beach to establish funds, including a Tideland Capital Fund and an Upper Newport Bay Restoration Fund, and authorizes the city to use the money in those funds on certain described lands administered by the Department of Fish and Game and other lands made subject to the public trust pursuant to that act and located in Upper Newport Bay.

(f) In addition to the lands granted by the Legislature to the County of Orange pursuant to Chapter 415 of the Statutes of 1975, the county has acquired additional lands adjacent to the Upper Newport Bay Ecological Reserve and desires to make these lands assets of the public trust and the legislative trust created by Chapter 526 of the Statutes of 1919, as amended by Chapter 415 of the Statutes of 1975. The State Lands Commission has approved the inclusion of these lands to be held as assets of those trusts and desires legislative adoption of the lands as trust assets.

(g) The lands described in Section 2 of Chapter 415 of the Statutes of 1975 included lands, which were the subject of, and affected by, the ''Upper Newport Bay Settlement Agreement for Transfer of Certain Real Property to the County of Orange and the City of Newport Beach, Jointly, and the State of California by the Irvine Company and for Settlement of Pending Litigation'' (hereafter ''agreement''), which was recorded on April 14, 1975, in Book 11376, Page 1514 of the Official Records of Orange County. Pursuant to that agreement, by the Grant Deed recorded on April 22, 1975, in Book 11382, Page 1876 of the Official Records of Orange County, the Irvine Company granted to the state, and the state acquired, by purchase from the Irvine Company certain described lands in and adjacent to Upper Newport Bay. The lands so acquired from the Irvine Company are included in the Upper Newport Bay Ecological Reserve. Some of those lands are subject to the public trust and others are not. The boundaries separating trust lands from non-trust lands in some of the Upper Newport Bay Ecological Reserve area have not been fixed. However, all of the lands, including those lands that are not subject to the public trust, are integral to the operation of the Upper Newport Bay Ecological Reserve and provide ecological benefits in the form of habitat that supports adjacent tide and submerged lands.

(h) It is the Legislature's intent to authorize the trustees, the County of Orange, and the City of Newport Beach to expend revenues generated from public trust lands that the county and city hold pursuant to Chapter 415 of the Statutes of 1975, Chapter 74 of the Statutes of 1978, and Chapter 317 of the Statutes of 1997, on those lands described in subdivisions (c), (e), and (g) above.

SEC. 2. Section 2 of Chapter 74 of the Statutes of 1978, as amended by Chapter 317 of the Statutes of 1997: is amended to read:

Sec. 2. (a) The City of Newport Beach shall establish a Tideland Capital Fund as one of the funds required by subdivision (i) of Section 1 of this act. The money in the Tideland Capital Fund shall be used by the city in conformity with the following terms and conditions:

(1) Expenditures from the fund may be made for the acquisition of real property that will further the purposes of the trust created by this act or for capital improvements for those purposes.

(2) The city may make acquisitions of real property by purchase, gift, or other conveyance, including, but not limited to, the transfer of city-owned property held in a municipal capacity to the trust created by this act. All such real property shall be held by the city in trust pursuant to this act.

(3) For purposes of this section, acquisition or improvement of real property by the city for purposes of enhancing the Upper Newport Bay Ecological Reserve shall be deemed to be authorized by, and be in furtherance of, the trust created by this act.

(4) The city may expend municipal funds to acquire real property for purposes specified in this subdivision. The city may transfer amounts from the Tideland Capital Fund to reimburse municipal funds for any such expenditures, together with an appropriate amount of interest on the municipal funds advanced, if the State Lands Commission gives advance approval of the transaction.

(b) The city shall establish a Tideland Operation and Maintenance Fund as one of the funds required by subdivision (i) of Section 1 of this act. The money in the Tideland Operation and Maintenance Fund shall be used by the city for operation and maintenance, as follows:

(1) On the tide and submerged lands granted by this act.

(2) On any additional lands and assets that are made subject to the public trust pursuant to this act.

(3) In furtherance of the purposes of the trust created by this act, including on lands and facilities within the Upper Newport Bay Ecological Reserve.

(c) The city shall establish an Upper Newport Bay Restoration Fund as one of the funds required by subdivision (i) of Section 1 of this act. The money in the Upper Newport Bay Restoration Fund shall be used by the city for Upper Newport Bay environmental restoration and improvement on lands described in paragraph (3) of subdivision (a) or otherwise authorized by, in furtherance of, or made subject to the public trust pursuant to this act and located in Upper Newport Bay, to do both of the following:

(1) Construct improvements to, or otherwise physically alter, those lands if the construction or alteration directly benefits those lands.

(2) Fund environmental documents, planning studies, or scientific analyses, or experiments directly related to the improvement or

enhancement of the habitat values of those lands and the water quality of the overlying waters.

(d) (1) Eighty percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Tideland Capital Fund described in subdivision (a) and in the Tideland Operation and Maintenance Fund described in subdivision (b), the allocation between those funds to be determined by the city.

(2) Ten percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Upper Newport Bay Restoration Fund described in subdivision (c).

(3) Ten percent of the money received by the city pursuant to subdivision (g) of Section 1 of this act shall be deposited in the Land Bank Fund created in the State Treasury pursuant to Section 8610 of the Public Resources Code, available for expenditure by the State Lands Commission as described in subparagraph (B) of paragraph (1) of subdivision (f) of Section 4.5 of this act.

(4) The city may deposit in the city funds established pursuant to subdivisions (a), (b), and (c) any other income from the tide and submerged lands granted to the city pursuant to this act or from lands otherwise held in the public trust pursuant to this act that the city determines to be appropriate and consistent with this act and the public trust.

SEC. 3. Section 4.5 is added to Chapter 74 of the Statutes of 1978, to read:

Sec. 4.5. The lands acquired by the City of Newport Beach, as described in instrument #139051436, recorded on January 7, 1981, in the Official Records of Orange County and dedicated to the trust by the city, as approved by the State Lands Commission pursuant to the Commission's Minute Item #27 on May 28, 1981, may, upon formal concurrence of the State Lands Commission, be transferred and conveyed by the City of Newport Beach to the County of Orange to be held in trust by the county pursuant to the terms of Chapter 415 of the Statutes of 1975.

SEC. 4. Section 5.5 is added to Chapter 74 of the Statutes of 1978, to read:

Sec. 5.5. The City of Newport Beach may, upon formal concurrence of the State Lands Commission, transfer and convey trust lands to the County of Orange to be held in trust by the county pursuant to the terms of Chapter 526 of the Statutes of 1919, as amended by Chapter 415 of the Statutes of 1975.

SEC. 5. Section 2 is added to Chapter 526 of the Statutes of 1919, to read:

Sec. 2. (a) The lands owned by the County of Orange, pursuant to the instruments recorded in the Official Records of Orange County listed

in subdivisions (b) to (e), inclusive, listed below, and dedicated by the county to the trust on December 16, 2003, by Resolution 03-385, and approved by the State Lands Commission pursuant to the Commission's Minute Item #24 on April 5, 2004, as assets of the public trust, are hereby accepted as assets of the public trust and shall be held in trust by the County of Orange, pursuant to the provisions of this act.

(b) 85-138036 OR, recorded April 18, 1985.

(c) 85-138037 OR, recorded April 18, 1985.

(d) 89-388787 OR, recorded July 24, 1989.

(e) 90-395556 OR, recorded July 27, 1990.

SEC. 6. Section 3 is added to Chapter 526 of the Statutes of 1919, to read:

Sec. 3. The County of Orange may, upon formal concurrence of the State Lands Commission, transfer and convey trust lands to the City of Newport Beach to be held in trust by the city pursuant to the terms of Chapter 74 of the Statutes of 1978, as amended by Chapter 317 of the Statutes of 1997.

CHAPTER 362

An act to amend Sections 60201 and 60203 of, and to repeal Section 60202 of, the Government Code, relating to districts.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 60201 of the Government Code is amended to read:

60201. (a) For purposes of this section, ''record'' means any record consisting of a ''writing,'' as defined by subdivision (f) of Section 6252.

(b) The legislative body of a district may destroy or dispose of any record that is not expressly required by law to be filed and preserved through either of the following procedures:

(1) The legislative body may authorize the destruction or disposition of any category of records if it does both of the following:

(A) Adopts a resolution finding that destruction or disposition of this category of records will not adversely affect any interest of the district or of the public.

(B) Maintains a list, by category, of the types of records destroyed or disposed of that reasonably identifies the information contained in the records in each category.

(2) The legislative body may, by resolution, adopt and comply with a record retention schedule that complies with guidelines provided by the Secretary of State pursuant to Section 12236, that classifies all of the district's records by category, and that establishes a standard protocol for destruction or disposition of records.

(c) A district is not required to photograph, reproduce, microfilm, or make a copy of any record that is destroyed or disposed of pursuant to this section.

(d) Notwithstanding any other provision of this section or other provision of law, a district may not destroy or dispose of any record that is any of the following:

(1) Relates to formation, change of organization, or reorganization of the district.

(2) An ordinance adopted by the district. However, an ordinance that has been repealed or is otherwise invalid or unenforceable may be destroyed or disposed of pursuant to this section five years after it was repealed or became invalid or unenforceable.

(3) Minutes of any meeting of the legislative body of the district.

(4) Relates to any pending claim or litigation or any settlement or other disposition of litigation within the past two years.

(5) Is the subject of any pending request made pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1), whether or not the district maintains that the record is exempt from disclosure, until the request has been granted or two years have elapsed since the district provided written notice to the requester that the request has been denied.

(6) Relates to any pending construction that the district has not accepted or as to which a stop notice claim legally may be presented.

(7) Relates to any nondischarged debt of the district.

(8) Relates to the title to real property in which the district has an interest.

(9) Relates to any nondischarged contract to which the district is a party.

(10) Has not fulfilled the administrative, fiscal, or legal purpose for which it was created or received.

(11) Is an unaccepted bid or proposal, which is less than two years old, for the construction or installation of any building, structure, or other public work.

(12) Specifies the amount of compensation paid to district employees or officers or to independent contractors providing personal or professional services to the district, or relates to expense reimbursement to district officers or employees or to the use of district paid credit cards or any travel compensation mechanism. However, a record described in

this paragraph may be destroyed or disposed of pursuant to this section seven years after the date of payment.

SEC. 2. Section 60202 of the Government Code is repealed.

SEC. 3. Section 60203 of the Government Code is amended to read:

60203. (a) Notwithstanding Section 60201, the legislative body of a district may authorize the destruction of any record, paper, or document that is not expressly required by law to be filed and preserved if all of the following conditions are complied with:

(1) The record, paper, or document is photographed, microphotographed, reproduced by electronically recorded video images on magnetic surfaces, recorded in the electronic data processing system, recorded on optical disk, reproduced on film or any other medium that is a trusted system and that does not permit additions, deletions, or changes to the original document in compliance with Section 12168.7 for recording of permanent records or nonpermanent records.

(2) The device used to reproduce the record, paper, or document on film, optical disk, or any other medium is one that accurately reproduces the original thereof in all details and that does not permit additions, deletions, or changes to the original document images.

(3) The photographs, microphotographs, or other reproductions on film, optical disk, or any other medium are placed in conveniently accessible files and provision is made for preserving, examining, and using the files.

(b) For the purposes of this section, every reproduction shall be deemed to be an original record and a transcript, exemplification, or certified copy of any reproduction shall be deemed to be a transcript, exemplification, or certified copy, as the case may be, of the original.

CHAPTER 363

An act to amend amend Sections 22511.56 and 22511.57 of, and to amend, repeal, and add Section 5007 of, the Vehicle Code, relating to vehicles.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 5007 of the Vehicle Code is amended to read:

5007. (a) The department shall, upon application and without additional fees, issue a special license plate or plates to a disabled person or disabled veteran, pursuant to procedures adopted by the department.

(b) The special license plates issued to a disabled person or disabled veteran shall run in a regular numerical series that shall include one or more unique two-letter codes reserved for disabled person license plates or disabled veteran license plates. The International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641 commonly known as the ''wheelchair symbol'' shall be depicted on each plate.

(c) (1) Prior to issuing a disabled person or disabled veteran a special license plate, 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 a person who has lost, or has lost use of, one or more lower extremities or one hand, for a disabled veteran, or both hands, for a disabled person or who has significant limitation in the use of lower extremities, may also be certified by a licensed chiropractor. The blindness of an applicant shall be certified by a licensed physician or surgeon who specializes in diseases of the eye or a licensed optometrist.

(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.

(d) The special license plate shall, upon the death of the disabled person or disabled veteran, be returned to the department within 60 days or upon the expiration of the vehicle registration, whichever occurs first.

(e) 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. 2. Section 5007 is added to the Vehicle Code, to read:

5007. (a) The department shall, upon application and without additional fees, issue a special license plate or plates to a disabled person or disabled veteran, pursuant to procedures adopted by the department.

(b) The special license plates issued to a disabled person or disabled veteran shall run in a regular numerical series that shall include one or more unique two-letter codes reserved for disabled person license plates or disabled veteran license plates. The International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641 commonly known as the ''wheelchair symbol'' shall be depicted on each plate.

(c) (1) Prior to issuing a special license plate to a disabled person or disabled veteran, 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 a person who has lost, or has lost use of, one or more lower extremities or one hand, for a disabled veteran, or both hands, for a disabled person, or who has significant limitation in the use of lower extremities, may also be certified by a licensed chiropractor. The blindness of an applicant shall be certified by a licensed physician or surgeon who specializes in diseases of the eye or a licensed optometrist. The physician, surgeon, chiropractor, or optometrist certifying the qualifying disability shall provide a full description of the illness or disability on the form submitted to the department.

(2) The physician surgeon, chiropractor, or optometrist 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 or the appropriate regulatory board.

(d) A disabled person or disabled veteran issued a license plate or plates under this section shall, upon request, present to a peace officer, or person authorized to enforce parking laws, ordinances, or regulations, a certification form that substantiates the eligibility of the disabled person or veteran to possess the plate or plates. The certification shall be on a form prescribed by the department and contain the name of the disabled person or veteran to whom the plate or plates were issued, and the name, address, and telephone number of the medical professional described in subdivision (c) who certified the eligibility of the person or veteran for the plate or plates.

(e) The special license plate shall, upon the death of the disabled person or disabled veteran, be returned to the department within 60 days or upon the expiration of the vehicle registration, whichever occurs first.

(f) This section shall become operative on July 1, 2005.

SEC. 3. Section 22511.56 of the Vehicle Code is amended to read:

22511.56. (a) A person using a distinguishing placard issued under Section 22511.55 or 22511.59, or a special license plate issued under Section 5007, for parking as permitted by Section 22511.5 shall, upon request of a peace officer or person authorized to enforce parking laws, ordinances, or regulations, present identification and evidence of the issuance of that placard or plate to that person.

(b) Failure to present the requested identification and evidence of the issuance of that placard or plate shall be a rebuttable presumption that the placard or plate is being misused and that the associated vehicle has been parked in violation of Section 22507.8, or has exercised a disabled person's parking privilege pursuant to Section 22511.5.

(c) In addition to any other applicable penalty for the misuse of a placard, the officer or parking enforcement person may confiscate a

placard being used for parking purposes that benefit a person other than the person to whom the placard was issued by the Department of Motor Vehicles. A placard lawfully used by a person transporting a disabled person pursuant to subdivision (b) of Section 4461 may not be confiscated.

(d) In addition to any other applicable penalty for the misuse of a special license plate issued under Section 5007, a peace officer may confiscate the plate being used for parking purposes that benefit a person other than the person to whom the plate was issued by the Department of Motor Vehicles.

(e) After verification with the Department of Motor Vehicles that the user of the placard or plate is not the registered owner of the placard or plate, the appropriate agency that confiscated the placard or plate shall notify the department of the placard or plate number and the department shall cancel the placard or plate. A placard or plate canceled by the department pursuant to this subdivision may be destroyed by the agency that confiscated the placard or plate.

SEC. 4. Section 22511.57 of the Vehicle Code is amended to read:

22511.57. Local authorities may, by ordinance or resolution, prohibit or restrict the parking or standing of a vehicle on streets or highways or from a disabled person's parking stall or space of a privately or publicly owned or operated offstreet parking facility within their jurisdiction when the vehicle displays, in order to obtain special parking privileges, a distinguishing placard issued under Section 22511.55, and the Department of Motor Vehicles record for the identification number assigned to the placard indicates that the placard has been reported as lost, stolen, surrendered, canceled, revoked, or expired, or was issued to a person who has been reported as being deceased for a period exceeding 60 days.

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 364

An act to amend Sections 44775.1 and 44775.8 of, and to add Section 44775.9 to, the Education Code, relating to public schools.

[Approved by Governor August 27, 2004. Filed with
Secretary of State August 30, 2004.]

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

SECTION 1. Section 44775.1 of the Education Code is amended to read:

44775.1. (a) As used in this chapter, the following words have the following meanings:

(1) ''Taskforce'' means the California Taskforce on Holocaust, Genocide, Human Rights, and Tolerance Education established pursuant to this chapter.

(2) ''Center'' means the Center for Excellence on the Study of the Holocaust, Genocide, Human Rights, and Tolerance established pursuant to this chapter.

(3) ''State'' means the State of California.

(b) 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. Section 44775.8 of the Education Code is amended to read:

44775.8. The center shall engage in the following activities:

(a) Support and facilitate teachers' use of certificate programs in Holocaust and genocide studies developed through the California State University.

(b) Act as a clearinghouse for teacher training materials.

(c) Provide specialized training for teachers and school districts.

(d) Assess and monitor the effectiveness of teacher training programs provided by the center.

(e) Promote Holocaust and genocide awareness.

(f) Compile a roster of volunteers who are willing to share their survivor testimony in classrooms, seminars, and workshops on the subject of the Holocaust or genocide and make the roster available on the center's Web site.

(g) Solicit financial support from both the public and private sectors.

(h) Promote activities to memorialize the Holocaust and genocide events.

(i) Prepare and submit a report to the Secretary for Education, the Governor, and the Legislature no later than January 31, 2007, outlining the activities of the center and reporting on the progress made in achieving the goals outlined in subdivision (b) of Section 44775.7. In addition, the report shall include information on the amount of nonstate funds secured for the purposes of the center and the number of teachers who have participated in training provided by the center.

SEC. 3. Section 44775.9 is added to the Education Code, to read:

44775.9. No funds, or resources supported by funds, available to the California State University for support of its educational mission shall be redirected to support the center, including revenues from the General Fund, the California State Lottery Education Fund, and student fee revenues, as well as reimbursements and other income that otherwise would be available for support of the educational mission of the center.

SEC. 4. It is the intent of the Legislature that no state funds may be used to fund the Center for Excellence on the Study of the Holocaust, Genocide, Human Rights, and Tolerance.

CHAPTER 365

An act to add Section 11713.17 to the Vehicle Code, relating to vehicles.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 11713.17 is added to the Vehicle Code, to read:

11713.17. (a) Following the retail sale or lease of a motor vehicle for which the department issues two license plates, a dealer may not deliver the motor vehicle unless either of the following occurs:

(1) The motor vehicle is equipped with a bracket or other means of securing a front license plate.

(2) The dealer obtains a signed written acknowledgment from the person taking delivery of the motor vehicle acknowledging both of the following:

(A) The person expressly refused installation of a bracket or other means of securing the front license plate.

(B) The person understands that California law requires a license plate to be displayed from and securely fastened to the front of the motor vehicle and that the hardware necessary to securely fasten the front plate is available from the dealer.

(b) A manufacturer or distributor may not sell or distribute in this state a new motor vehicle for which the department issues two license plates, unless that motor vehicle is equipped or provided with a bracket or other means of securing the license plates.

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 366

An act to amend Section 8489.9 of the Education Code, relating to child care.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 8489.9 of the Education Code is amended to read:

8489.9. This article shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

CHAPTER 367

An act to amend Sections 2154, 2154.1, and 2154.2 of, and to amend the heading of Article 7.7 (commencing with Section 2154) of Chapter 5 of Division 2 of, the Business and Professions Code, relating to public health.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

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

(1) Steven M. Thompson is the Vice President of Government Relations for the California Medical Association, having held this position since 1992.

(2) Steven M. Thompson has been involved in the legislative process of this state for almost 40 years, serving as a staff member for the Legislature and as a governmental advocate for the interests of his clients before the Legislature.

(3) Throughout his distinguished career, Steven M. Thompson has directed or codirected significant legislation in the area of public health, including the Lanterman-Petris-Short Act, the Lanterman Developmental Disabilities Services Act, the Physician Assistant Practice Act, the Child Health Disability Program, and reforms of the Medi-Cal program and has published numerous studies and reports on major public health issues.

(4) In recognition of his achievements in this area, Steven M. Thompson was awarded the American Public Health Association Achievement Award for Excellence in Organizational Research and the United States Institute of Medicine Award for Achievement in Health Policy.

(5) Of all the major legislation on which Steven M. Thompson has worked, he is particularly proud of the California Physician Corps Loan Repayment Program of 2002 (Article 7.7 (commencing with Section 2154) of Chapter 5 of Division 2 of the Business and Professions Code).

(6) The Californian Physician Corps Loan Repayment Program of 2002 provides a valuable public health service to medically underserviced communities by providing financial incentives to physicians and surgeons to practice in those communities thereby increasing the availability of those services to their residents.

(b) It is therefore the intent of the Legislature in honor and recognition of the contributions made by Steven M. Thompson, to rename the California Physician Corps Loan Repayment Program of 2002, the Steven M. Thompson Physician Corps Loan Repayment Program.

SEC. 2. The heading of Article 7.7 (commencing with Section 2154) of Chapter 5 of Division 2 of the Business and Professions Code is amended to read:

Article 7.7. Steven M. Thompson Physician Corps Loan Repayment Program

SEC. 3. Section 2154 of the Business and Professions Code is amended to read:

2154. There is hereby established in the Division of Licensing of the Medical Board of California, the Steven M. Thompson Physician Corps Loan Repayment Program. This program shall be known and may be cited as the Steven M. Thompson Physician Corps Loan Repayment Program.

SEC. 4. Section 2154.1 of the Business and Professions Code is amended to read:

2154.1. It is the intent of this article that the Division of Licensing, in consultation with the Office of Statewide Health Planning and Development, the medical community, including ethnic representatives,

medical schools, health advocates representing ethnic communities, primary care clinics, public hospitals and health systems, statewide agencies administering state and federally funded programs targeting underserved communities, and members of the public with health care issue-area expertise shall develop and implement the Steven M. Thompson Physician Corps Loan Repayment Program.

SEC. 5. Section 2154.2 of the Business and Professions Code is amended to read:

2154.2. The following definitions apply for the purposes of this article:

(a) ''Division'' means the Division of Licensing.

(b) ''Office'' means the Office of Statewide Health Planning and Development (OSHPD).

(c) ''Program'' means the Steven M. Thompson 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.

CHAPTER 368

An act to amend Section 803 of, to add Sections 801.1 and 803.6 to, and to repeal Section 805.5 of, the Penal Code, relating to criminal procedure.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 801.1 is added to the Penal Code, to read:

801.1. Notwithstanding any other limitation of time described in this chapter, prosecution for a felony offense described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290 shall be commenced within 10 years after commission of the offense.

SEC. 2. Section 803 of the Penal Code is amended to read:

803. (a) Except as provided in this section, a limitation of time prescribed in this chapter is not tolled or extended for any reason.

(b) No time during which prosecution of the same person for the same conduct is pending in a court of this state is a part of a limitation of time prescribed in this chapter.

(c) A limitation of time prescribed in this chapter does not commence to run until the discovery of an offense described in this subdivision. This subdivision applies to an offense punishable by imprisonment in the state prison, a material element of which is fraud or breach of a fiduciary obligation, the commission of the crimes of theft or embezzlement upon an elder or dependent adult, or the basis of which is misconduct in office by a public officer, employee, or appointee, including, but not limited to, the following offenses:

(1) Grand theft of any type, forgery, falsification of public records, or acceptance of a bribe by a public official or a public employee.

(2) A violation of Section 72, 118, 118a, 132, or 134.

(3) A violation of Section 25540, of any type, or Section 25541 of the Corporations Code.

(4) A violation of Section 1090 or 27443 of the Government Code.

(5) Felony welfare fraud or Medi-Cal fraud in violation of Section 11483 or 14107 of the Welfare and Institutions Code.

(6) Felony insurance fraud in violation of Section 548 or 550 of this code or former Section 1871.1, or Section 1871.4, of the Insurance Code.

(7) A violation of Section 580, 581, 582, 583, or 584 of the Business and Professions Code.

(8) A violation of Section 22430 of the Business and Professions Code.

(9) A violation of Section 10690 of the Health and Safety Code.

(10) A violation of Section 529a.

(11) A violation of subdivision (d) or (e) of Section 368.

(d) If the defendant is out of the state when or after the offense is committed, the prosecution may be commenced as provided in Section 804 within the limitations of time prescribed by this chapter, and no time up to a maximum of three years during which the defendant is not within the state shall be a part of those limitations.

(e) A limitation of time prescribed in this chapter does not commence to run until the offense has been discovered, or could have reasonably been discovered, with regard to offenses under Division 7 (commencing with Section 13000) of the Water Code, under Chapter 6.5 (commencing with Section 25100) of, Chapter 6.7 (commencing with Section 25280) of, or Chapter 6.8 (commencing with Section 25300) of, Division 20 of, or Part 4 (commencing with Section 41500) of Division 26 of, the Health and Safety Code, or under Section 386, or offenses under Chapter 5 (commencing with Section 2000) of Division 2 of, Chapter 9 (commencing with Section 4000) of Division 2 of, Section 6126 of, Chapter 10 (commencing with Section 7301) of Division 3 of, or Chapter 19.5 (commencing with Section 22440) of Division 8 of, the Business and Professions Code.

(f) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a responsible adult or agency by a child under 18 years of age that the child is a victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) For purposes of this subdivision, a ''responsible adult'' or ''agency'' means a person or agency required to report pursuant to Section 11166. This subdivision applies only if both of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The defendant has committed at least one violation of Section 261, 286, 288, 288a, 288.5, 289, or 289.5 against the same victim within the limitation period specified for that crime in Section 800, 801, or 801.1.

(g) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date of a report to a California law enforcement agency by a person of any age

alleging that he or she, while under the age of 18 years, was the victim of a crime described in Section 261, 286, 288, 288a, 288.5, 289, or 289.5.

(2) This subdivision applies only if all of the following occur:

(A) The limitation period specified in Section 800, 801, or 801.1, whichever is later, has expired.

(B) The crime involved substantial sexual conduct, as described in subdivision (b) of Section 1203.066, excluding masturbation that is not mutual.

(C) There is independent evidence that corroborates the victim's allegation. If the victim was 21 years of age or older at the time of the report, the independent evidence shall clearly and convincingly corroborate the victim's allegation.

(3) No evidence may be used to corroborate the victim's allegation that otherwise would be inadmissible during trial. Independent evidence does not include the opinions of mental health professionals.

(h) (1) Notwithstanding any other limitation of time described in this chapter, a criminal complaint may be filed within one year of the date on which the identity of the suspect is conclusively established by DNA testing, if both of the following conditions are met:

(A) The crime is one that is described in subparagraph (A) of paragraph (2) of subdivision (a) of Section 290.

(B) The offense was committed prior to January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than January 1, 2004, or the offense was committed on or after January 1, 2001, and biological evidence collected in connection with the offense is analyzed for DNA type no later than two years from the date of the offense.

(2) For purposes of this section, ''DNA'' means deoxyribonucleic acid.

(i) For any crime, the proof of which depends substantially upon evidence that was seized under a warrant, but which is unavailable to the prosecuting authority under the procedures described in People v. Superior Court (Laff) (2001) 25 Cal.4th 703, People v. Superior Court (Bauman & Rose) (1995) 37 Cal.App.4th 1757, or subdivision (c) of Section 1524, relating to claims of evidentiary privilege or attorney work product, the limitation of time prescribed in this chapter shall be tolled from the time of the seizure until final disclosure of the evidence to the prosecuting authority. Nothing in this section otherwise affects the definition or applicability of any evidentiary privilege or attorney work product.

(j) (1) In a criminal investigation involving child sexual abuse as described in subdivision (f) or (g), when the limitations period set forth therein has not expired, that period shall be tolled from the time a party initiates litigation challenging a grand jury subpoena until the end of that

litigation, including any associated writ or appellate proceeding, or until the final disclosure of evidence to the investigating or prosecuting agency, if that disclosure is ordered pursuant to the subpoena after the litigation.

(2) Nothing in this subdivision affects the definition or applicability of any evidentiary privilege.

(3) This subdivision shall not apply where a court finds that the grand jury subpoena was issued or caused to be issued in bad faith.

(k) As used in subdivisions (f) and (g), Section 289.5 refers to the statute enacted by Chapter 293 of the Statutes of 1991 relating to penetration by an unknown object.

SEC. 3. Section 803.6 is added to the Penal Code, to read:

803.6. (a) If more than one time period described in this chapter applies, the time for commencing an action shall be governed by that period that expires the latest in time.

(b) Any change in the time period for the commencement of prosecution described in this chapter applies to any crime if prosecution for the crime was not barred on the effective date of the change by the statute of limitations in effect immediately prior to the effective date of the change.

(c) This section is declaratory of existing law.

SEC. 4. Section 805.5 of the Penal Code is repealed.

CHAPTER 369

An act to amend Section 5290 of the Family Code, relating to assignment orders.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 5290 of the Family Code is amended to read:

5290. No employer shall use an assignment order authorized by this chapter as grounds for refusing to hire a person, or for discharging, taking disciplinary action against, denying a promotion to, or for taking any other action adversely affecting the terms and conditions of employment of, an employee. An employer who engages in the conduct prohibited by this section may be assessed a civil penalty of a maximum of five hundred dollars ($500).

CHAPTER 370

An act to amend Sections 18761 and 18766 of the Revenue and Taxation Code, relating to taxation.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 18761 of the Revenue and Taxation Code is amended to read:

18761. The Legislature finds and declares all of the following:

(a) Alzheimer's disease and related dementia disorders are devastating health conditions that cause a loss of intellectual functioning so severe that they interfere with an individual's daily functioning and eventually result in death. These conditions affect 10 percent of Californians over the age of 65 years and 50 percent of Californians who are 85 years of age or older. They cause serious financial, social, and emotional hardships on those affected and on their family caregivers.

(b) The total annual cost of caring for individuals with Alzheimer's disease and other dementia disorders in California is over $10 billion. These conditions cost California businesses $3.3 billion annually, most of which is due to the lost productivity of family caregivers. Approximately 50 percent of all nursing home admissions in California are attributable to Alzheimer's disease and related dementia disorders.

(c) While scientists have made great strides in understanding Alzheimer's disease and other causes of dementia, there is no known prevention or cure at this time.

(d) It is the intent of the Legislature, in enacting this article, to establish a systematic program for the conduct of research regarding the cause, prevention, diagnosis, cure, and treatment of Alzheimer's disease and related disorders. The outcome of this research may have direct effects and consequences on the development of a comprehensive system that will provide diagnoses and treatment to victims of those health problems. This program shall award grants to eligible physicians, hospitals, laboratories, educational institutions, and other organizations and persons for the purpose of enabling those organizations and persons to conduct research.

SEC. 2. Section 18766 of the Revenue and Taxation Code is amended to read:

18766. (a) This article shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes that date.

(b) If, in any calendar year, the Franchise Tax Board estimates by September 1 that contributions described in this article made on returns filed in that calendar year will be less than two hundred fifty thousand dollars ($250,000) for taxable years beginning in 2000, or the adjusted amount specified in subdivision (c) for subsequent taxable years, as may be applicable, then this article is repealed with respect to taxable years beginning on and after January 1 of that calendar year. The Franchise Tax Board shall estimate the annual contribution amount by September 1 of each year using the actual amounts known to be contributed and an estimate of the remaining year's contributions.

(c) For each calendar year, beginning with calendar year 1992, the Franchise Tax Board shall adjust, on or before September 1 of that calendar year, the minimum estimated contribution amount specified in subdivision (b) as follows:

(1) The minimum estimated contribution amount for the calendar year shall be an amount equal to the product of the minimum estimated contribution amount for the prior September 1 multiplied by the inflation factor adjustment as specified in paragraph (2) of subdivision (h) of Section 17041, rounded off to the nearest dollar.

(2) The inflation factor adjustment used for the calendar year shall be based on the figures for the percentage change in the California Consumer Price Index received on or before August 1 of the calendar year pursuant to paragraph (1) of subdivision (h) of Section 17041.

(d) Notwithstanding the repeal of this article, any contribution amounts designated pursuant to this article prior to its repeal shall continue to be transferred and disbursed in accordance with this article as in effect immediately prior to that repeal.

CHAPTER 371

An act to add Section 22651.05 to the Vehicle Code, relating to vehicles.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 22651.05 is added to the Vehicle Code, to read:

22651.05. (a) A trained volunteer of a state or local law enforcement agency, who is engaged in directing traffic or enforcing parking laws and regulations, of a city, county, or jurisdiction of a state

agency in which a vehicle is located, may remove or authorize the removal of a vehicle located within the territorial limits in which an officer or employee of that agency may act, under any of the following circumstances:

(1) When a vehicle is parked or left standing upon a highway for 72 or more consecutive hours in violation of a local ordinance authorizing the removal.

(2) When a vehicle is illegally parked or left standing on a highway in violation of a local ordinance forbidding standing or parking and the use of a highway, or a portion thereof, is necessary for the cleaning, repair, or construction of the highway, or for the installation of underground utilities, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(3) Wherever the use of the highway, or a portion thereof, is authorized by local authorities for a purpose other than the normal flow of traffic or for the movement of equipment, articles, or structures of unusual size, and the parking of a vehicle would prohibit or interfere with that use or movement, and signs giving notice that the vehicle may be removed are erected or placed at least 24 hours prior to the removal by local authorities pursuant to the ordinance.

(4) Whenever a vehicle is parked or left standing where local authorities, by resolution or ordinance, have prohibited parking and have authorized the removal of vehicles. A vehicle may not be removed unless signs are posted giving notice of the removal.

(5) Whenever a vehicle is parked for more than 24 hours on a portion of highway that is located within the boundaries of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, and signs, as required by Section 22658.2, have been posted on that portion of highway providing notice to drivers that vehicles parked thereon for more than 24 hours will be removed at the owner's expense, pursuant to a resolution or ordinance adopted by the local authority.

(b) The provisions of this chapter that apply to a vehicle removed pursuant to Section 22651 apply to a vehicle removed pursuant to subdivision (a).

(c) For purposes of subdivision (a), a ''trained volunteer'' is a person who, of his or her own free will, provides services, without any financial gain, to a local or state law enforcement agency, and who is duly trained and certified to remove a vehicle by a local or state law enforcement agency.

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CHAPTER 372

An act to add Section 1536.5 to the Penal Code, relating to business records.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1536.5 is added to the Penal Code, to read:

1536.5. (a) If a government agency seizes business records from an entity pursuant to a search warrant, the entity from which the records were seized may file a demand on that government agency to produce copies of the business records that have been seized. The demand for production of copies of business records shall be supported by a declaration, made under penalty of perjury, that denial of access to the records in question will either unduly interfere with the entity's ability to conduct its regular course of business or obstruct the entity from fulfilling an affirmative obligation that it has under the law. Unless the government agency objects pursuant to subdivision (d), this declaration shall suffice if it makes a prima facie case that specific business activities or specific legal obligations faced by the entity would be impaired or impeded by the ongoing loss of records.

(b) (1) Except as provided in paragraph (2), when a government agency seizes business records from an entity and is subsequently served with a demand for copies of those business records pursuant to subdivision (a), the government agency in possession of those records shall make copies of those records available to the entity within 10 court days of the service of the demand to produce copies of the records.

(2) In the alternative, the agency in possession of the original records, may in its discretion, make the original records reasonably available to the entity within 10 court days following the service of the demand to produce records, and allow the entity reasonable time to copy the records.

(3) No agency shall be required to make records available at times other than normal business hours.

(4) If data is recorded in a tangible medium, copies of the data may be provided in that same medium, or any other medium of which the entity may make reasonable use. If the data is stored electronically, electromagnetically, or photo-optically, the entity may obtain either a copy made by the same process in which the data is stored, or in the alternative, by any other tangible medium through which the entity may make reasonable use of the data.

(5) A government agency granting the entity access to the original records for the purpose of making copies of the records, may take reasonable steps to ensure the integrity and chain of custody of the business records.

(6) If the seized records are too voluminous to be reviewed or be copied in the time period required by subdivision (a), the government agency that seized the records may file a written motion with the court for additional time to review the records or make the copies. This motion shall be made within 10 court days of the service of the demand for the records. An extension of time under this paragraph shall not be granted unless the agency establishes that reviewing or producing copies of the records within the 10 court day time period, would create a hardship on the agency. If the court grants the motion, it shall make an order designating a timeframe for the review and the duplication and return of the business records, deferring to the entity the priority of the records to be reviewed, duplicated, and returned first.

(c) If a court finds that a declaration made by an entity as provided in subdivision (a) is adequate to establish the specified prima facie case, a government agency may refuse to produce copies of the business records or to grant access to the original records only under one or both of the following circumstances:

(1) The court determines by the preponderance of the evidence standard that denial of access to the business records or copies of the business records will not unduly interfere with the entity's ability to conduct its regular course of business or obstruct the entity from fulfilling an affirmative obligation that it has under the law.

(2) The court determines by the preponderance of the evidence standard that possession of the business records by the entity will pose a significant risk of ongoing criminal activity, or that the business records are contraband, evidence of criminal conduct by the entity from which the records were seized, or depict a person under the age of 18 years personally engaging in or simulating sexual conduct, as defined in subdivision (d) of Section 311.4.

(d) A government agency that desires not to produce copies of, or grant access to, seized business records shall file a motion with the court requesting an order denying the entity copies of and access to the records. A motion under this paragraph shall be in writing, and filed and served upon the entity prior to the expiration of 10 court days following the service of the demand to produce records specified in subdivision (a), within any extension of that time period granted under paragraph (6) of subdivision (b), or as soon as reasonably possible after discovery of the risk of harm.

(e) A hearing on a motion under subdivision (d) shall be held within two court days of the filing of the motion, except upon agreement of the parties.

(f) (1) Upon filing a motion under subdivision (d) opposing a demand for copies of records, the government agency may file a request in writing, served upon the demanding entity, that any showings of why the material should not be copied and released occur in an ex parte, in camera hearing. If the government agency alleges in its request for an in camera hearing that the demanding entity is, or is likely to become, a target of the investigation resulting in the seizure of records, the court shall hold this hearing outside of the presence of the demanding entity, and any representatives or counsel of the demanding entity. If the government agency does not allege in its request for an in camera hearing that the demanding entity is, or is likely to become, a target of the investigation resulting in the seizure of records, the court shall hold the hearing in camera only upon a particular factual showing by the government agency in its pleadings that a hearing in open court would impede or interrupt an ongoing criminal investigation.

(2) At the in camera hearing, any evidence that the government agency may offer that the release of the material would pose a significant risk of ongoing criminal activity, impede or interrupt an ongoing criminal investigation, or both, shall be offered under oath. A reporter shall be present at the in camera hearing to transcribe the entirety of the proceedings.

(3) Any transcription of the proceedings at the in camera hearing, as well as any physical evidence presented at the hearing, shall be ordered sealed by the court, and only a court may have access to its contents, unless a court determines that the failure to disclose the contents of the hearing would deprive the defendant or the people of a fair trial.

(4) Following the conclusion of the in camera hearing, the court shall make its ruling in open court, after notice to the demanding entity.

(g) The reasonable and necessary costs of producing copies of business records under this section shall be borne by the entity requesting copies of the records. Either party may request the court to resolve any dispute regarding these costs.

(h) Any motion under this section shall be filed in the court that issued the search warrant.

(i) For purposes of this section, the following terms are defined as follows:

(1) ''Seize'' means obtaining actual possession of any property alleged by the entity to contain business records.

(2) ''Business'' means an entity, sole proprietorship, partnership, or corporation operating legally in the State of California, that sells, leases,

distributes, creates, or otherwise offers products or services to customers.

(3) ''Business records'' means computer data, data compilations, accounts, books, reports, contracts, correspondence, inventories, lists, personnel files, payrolls, vendor and client lists, documents, or papers of the person or business normally used in the regular course of business, or any other material item of business recordkeeping that may become technologically feasible in the future.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution for certain costs that may be incurred by a local agency or school district because in that regard this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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

CHAPTER 373

An act to amend Section 319 of, to amend and repeal Section 309 of, and to repeal and amend Section 361.4 of, the Welfare and Institutions Code, relating to foster care.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 309 of the Welfare and Institutions Code, as amended by Section 3 of Chapter 918 of the Statutes of 2002, is amended to read:

309. (a) Upon delivery to the social worker of a child who has been taken into temporary custody under this article, the social worker shall immediately investigate the circumstances of the child and the facts surrounding the child's being taken into custody and attempt to maintain

the child with the child's family through the provision of services. The social worker shall immediately release the child to the custody of the child's parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The child has no parent, guardian, or responsible relative; or the child's parent, guardian, or responsible relative is not willing to provide care for the child.

(2) Continued detention of the child is a matter of immediate and urgent necessity for the protection of the child and there are no reasonable means by which the child can be protected in his or her home or the home of a responsible relative.

(3) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(4) The child has left a placement in which he or she was placed by the juvenile court.

(5) The parent or other person having lawful custody of the child voluntarily surrendered physical custody of the child pursuant to Section 1255.7 of the Health and Safety Code and did not reclaim the child within the 14-day period specified in subdivision (e) of that section.

(b) In any case in which there is reasonable cause for believing that a child who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in Section 300, the child shall be deemed to have been taken into temporary custody and delivered to the social worker for the purposes of this chapter while the child is at the office of the physician or surgeon or the medical facility.

(c) If the child is not released to his or her parent or guardian, the child shall be deemed detained for purposes of this chapter.

(d) (1) If an able and willing relative, as defined in Section 319, or an able and willing nonrelative extended family member, as defined in Section 362.7, is available and requests temporary placement of the child pending the detention hearing, the county welfare department shall initiate an assessment of the relative's or nonrelative extended family member's suitability, which shall include an in-home inspection to assess the safety of the home and the ability of the relative or nonrelative extended family member to care for the child's needs, and a consideration of the results of a criminal records check conducted pursuant to Section 16504.5 and a check of allegations of prior child abuse or neglect concerning the relative or nonrelative extended family member and other adults in the home. Upon completion of this assessment, the child may be placed in the assessed home. For purposes of this paragraph, and except for the criminal records check conducted pursuant to Section 16504.5, the standards used to determine suitability

shall be the same standards set forth in the regulations for the licensing of foster family homes.

(2) Immediately following the placement of a child in the home of a relative or a nonrelative extended family member, the county welfare department shall evaluate and approve or deny the home for purposes of AFDC-FC eligibility pursuant to Section 11402. The standards used to evaluate and grant or deny approval of the home of the relative and of the home of a nonrelative extended family member, as described in Section 362.7, shall be the same standards set forth in regulations for the licensing of foster family homes which prescribe standards of safety and sanitation for the physical plant and standards for basic personal care, supervision, and services provided by the caregiver.

(3) If a relative or nonrelative extended family member meets all other conditions for approval, except for the receipt of the Federal Bureau of Investigation's criminal history information for the relative or nonrelative extended family member, and other adults in the home, as indicated, the county welfare department may approve the home and document that approval, if the relative or nonrelative extended family member, and each adult in the home, has signed and submitted a statement that he or she has never been convicted of a crime in the United States, other than a traffic infraction as defined in paragraph (1) of subdivision (a) of Section 42001 of the Vehicle Code. If, after the approval has been granted, the department determines that the relative or nonrelative extended family member or other adult in the home has a criminal record, the approval may be terminated.

SEC. 2. Section 309 of the Welfare and Institutions Code, as amended by Section 4 of Chapter 918 of the Statutes of 2002, is repealed.

SEC. 3. Section 319 of the Welfare and Institutions Code is amended to read:

319. (a) At the initial petition hearing, the court shall examine the child's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the child, the child's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the child, as provided in Section 350.

(b) The social worker shall report to the court on the reasons why the child has been removed from the parent's custody; the need, if any, for continued detention; the available services and the referral methods to those services that could facilitate the return of the child to the custody of the child's parents or guardians; and whether there are any relatives who are able and willing to take temporary custody of the child. The court shall order the release of the child from custody unless a prima facie showing has been made that the child comes within Section 300, the court finds that continuance in the parent's or guardian's home is

contrary to the child's welfare, and any of the following circumstances exist:

(1) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parents' or guardians' physical custody.

(2) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(3) The child has left a placement in which he or she was placed by the juvenile court.

(4) The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

(c) If the matter is continued pursuant to Section 322 or for any other reason, the court shall find that the continuance of the child in the parent's or guardian's home is contrary to the child's welfare at the initial petition hearing or order the release of the child from custody.

(d) (1) The court shall also make a determination on the record, referencing the social worker's report or other evidence relied upon, as to whether reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home, pursuant to subdivision (b) of Section 306, and whether there are available services that would prevent the need for further detention. Services to be considered for purposes of making this determination are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) and Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6 of Division 9 would have eliminated the need to take temporary custody of the child or would prevent the need for further detention.

(2) If the child can be returned to the custody of his or her parent or guardian through the provision of those services, the court shall place the child with his or her parent or guardian and order that the services shall be provided. If the child cannot be returned to the custody of his or her parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child, and has been assessed pursuant to paragraph (1) of subdivision (d) of Section 309.

(e) Whenever a court orders a child detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary, shall reference the social worker's report or other evidence relied upon to make its determination whether continuance in the home of the parent or legal guardian in contrary to the child's welfare, shall order temporary placement and care of the child to be vested with the county child welfare department pending the hearing held pursuant to Section 355 or further order of the court, and shall order services to be provided as soon as possible to reunify the child and his or her family if appropriate.

(f) When the child is not released from custody, the court may order that the child shall be placed in the assessed home of a relative, in an emergency shelter or other suitable licensed place, in a place exempt from licensure designated by the juvenile court, or in the assessed home of a nonrelative extended family member as defined in Section 362.7 for a period not to exceed 15 judicial days.

As used in this section, "relative" means an adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great," or "grand," or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or sibling of the child.

The court shall consider the recommendations of the social worker based on the assessment pursuant to paragraph (1) of subdivision (d) of Section 309 of the relative's home, including the results of a criminal records check and prior child abuse allegations, if any, prior to ordering that the child be placed with a relative. The court shall order the parent to disclose to the social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child. The social worker shall initiate the assessment pursuant to Section 361.3 of any relative to be considered for continuing placement.

SEC. 4. Section 361.4 of the Welfare and Institutions Code, as amended by Section 5 of Chapter 918 of the Statutes of 2002, is repealed.

SEC. 5. Section 361.4 of the Welfare and Institutions Code, as amended by Section 6 of Chapter 918 of the Statutes of 2002, is amended to read:

361.4. (a) Prior to placing a child in the home of a relative, or the home of any prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall visit the home to ascertain the appropriateness of the placement.

(b) Whenever a child may be placed in the home of a relative, or the home of any prospective guardian or other person who is not a licensed

or certified foster parent, the court or county social worker placing the child shall cause a state and federal level criminal records check to be conducted by an appropriate governmental agency through the California Law Enforcement Telecommunications System (CLETS) pursuant to Section 16504.5. The criminal records check shall be conducted with regard to all persons over the age of 18 years living in the home, and on any other person over the age of 18 years, other than professionals providing professional services to the child, known to the placing entity who may have significant contact with the child, including any person who has a familial or intimate relationship with any person living in the home. A criminal records check may be conducted pursuant to this section on any person over the age of 14 years living in the home who the county social worker believes may have a criminal record. Within five judicial days following the criminal records check conducted through the California Law Enforcement Telecommunications System, the social worker shall ensure that a fingerprint clearance check of the relative and any other person whose criminal record was obtained pursuant to this subdivision is initiated through the Department of Justice to ensure the accuracy of the criminal records check conducted through the California Law Enforcement Telecommunications System and shall review the results of any criminal records check to assess the safety of the home. The Department of Justice shall forward fingerprint requests for federal level criminal history information to the Federal Bureau of Investigation pursuant to this section.

(c) Whenever a child may be placed in the home of a relative, or a prospective guardian or other person who is not a licensed or certified foster parent, the county social worker shall cause a check of the Child Abuse Index pursuant to subdivision (a) of Section 11170 of the Penal Code to be requested from the Department of Justice. The Child Abuse Index check shall be conducted on all persons over the age of 18 years living in the home.

(d) (1) If the criminal records check indicates that the person has no criminal record, the county social worker and court may consider the home of the relative, prospective guardian, or other person who is not a licensed or certified foster parent for placement of a child.

(2) If the criminal records check indicates that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code, the child may not be placed in the home, unless a criminal records exemption has been granted by the county, based on substantial and convincing evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a risk of harm to the child pursuant to paragraph (3).

(3) (A) A county may issue a criminal records exemption only if that county has been granted permission by the Director of Social Services to issue criminal records exemptions. The county may file a request with the Director of Social Services seeking permission for the county to establish a procedure to evaluate and grant appropriate individual criminal records exemptions for persons described in subdivision (b). The director shall grant or deny the county's request within 14 days of receipt. The county shall evaluate individual criminal records in accordance with the standards and limitations set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code, and in no event shall the county place a child in the home of a person who is ineligible for an exemption under that provision.

(B) The department shall monitor county implementation of the authority to grant an exemption under this paragraph to ensure that the county evaluates individual criminal records and allows or disallows placements according to the standards set forth in paragraph (1) of subdivision (g) of Section 1522 of the Health and Safety Code.

(4) The department shall conduct an evaluation of the implementation of paragraph (3) through random sampling of county exemption decisions.

(5) The State Department of Social Services shall not evaluate or grant criminal record exemption requests for persons described in subdivision (b), unless the exemption request is made by an Indian tribe pursuant to subdivision (f).

(6) If a county has not requested, or has not been granted, permission by the State Department of Social Services to establish a procedure to evaluate and grant criminal records exemptions, the county may not place a child into the home of a person described in subdivision (b) if any person residing in the home has been convicted of a crime other than a minor traffic violation, except as provided in subdivision (f).

(e) Nothing in this section shall preclude a county from conducting a criminal background check that the county is otherwise authorized to conduct using fingerprints.

(f) Upon request from an Indian tribe, the State Department of Social Services shall evaluate an exemption request, if needed, to allow placement into an Indian home that the tribe has designated for placement under the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) that would otherwise be barred under this section. However, if the county with jurisdiction over the child that is the subject of the tribe's request has established an approved procedure pursuant to paragraph (3) of subdivision (d), the tribe may request that the county evaluate the exemption request. Once a tribe has elected to have the exemption request reviewed by either the State Department of Social Services or the county, the exemption decision may only be made by that entity. Nothing

in this subdivision limits the duty of a county social worker to evaluate the home for placement or to gather information needed to evaluate an exemption request.

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

SEC. 6. Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

CHAPTER 374

An act to amend Section 115825 of, and to add and repeal Section 115843.3 of, the Health and Safety Code, relating to drinking water.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 115825 of the Health and Safety Code is amended to read:

115825. (a) It is hereby declared to be the policy of this state that multiple use should be made of all public water within the state, to the extent that multiple use is consistent with public health and public safety.

(b) Except as provided in this article, recreational uses shall not, with respect to a reservoir in which water is stored for domestic use, include recreation in which there is bodily contact with the water by any participant.

SEC. 2. Section 115843.3 is added to the Health and Safety Code, to read:

115843.3. (a) In the Bear Lake Reservoir, recreational uses shall not include recreation in which any participant has bodily contact with the water, unless all of the following conditions are satisfied:

(1) The water shall receive ongoing complete water treatment, including coagulation, flocculation, sedimentation, filtration, and disinfection, or an alternative filtration system that provides an equivalent degree of pathogen removal in compliance with all applicable

department regulations before being used for domestic purposes. The disinfection shall include, but is not limited to, ozonation or ultraviolet disinfection capable of inactivating organisms including virus, cryptosporidium, and giardia, to levels that comply with department regulations.

(2) The Lake Alpine Water Company conducts a monitoring program for total coliform bacteria, which includes E. coli and fecal coliform, at the reservoir intake at a frequency determined by the department.

(3) The reservoir is operated in compliance with regulations of the department.

(b) The recreational use of that reservoir shall be subject to additional conditions and restrictions adopted by the entity operating the water supply reservoir, or required by the department, that are required to further protect or enhance the public health and safety and do not conflict with regulations of the department. The department shall, prior to requiring any additional conditions and restrictions, consult with the entity operating the water supply reservoir regarding the proposed conditions and restrictions at least 60 days prior to the effective date of those conditions and restrictions.

(c) The Lake Alpine Water Company shall file, on or before January 1, 2006, with the Legislature and the department, a report on the recreational uses at Bear Lake Reservoir and the water treatment program for that reservoir. That report shall include, but is not limited to, providing all of the following information:

(1) The estimated levels and types of recreational uses at the reservoir on a monthly basis.

(2) The levels of methyl tertiary butyl ether taken at various reservoir locations on a monthly basis, unless the use of watercraft with gasoline-powered engines is prohibited.

(3) A summary of monitoring in the Bear Lake Reservoir watershed for giardia and cryptosporidium.

(4) The sanitary survey of the watershed and water quality monitoring plan.

(5) An evaluation of recommendations relating to removal and inactivation of cryptosporidium and giardia.

(6) Annual reports provided to the department as required by the water permit issued by the department.

(7) An evaluation of the impact on source water quality due to recreational activities on Bear Lake Reservoir, including any microbiological monitoring.

(8) A summary of any activities for operation of recreational uses and facilities in a manner that optimizes the water quality.

(9) The reservoir management plan and the operations plan.

(10) The annual water reports submitted to the consumers each year.

(d) If there is a change in operation of the treatment facility or a change in the quantity of water to be treated at the treatment facility, the department may require the entity operating the water supply reservoir to file a report that includes, but is not limited to, the information required pursuant to subdivision (c), and the entity shall demonstrate to the satisfaction of the department that water quality will not be adversely affected.

(e) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 3. 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 in the Bear Lake Reservoir. The facts constituting the special circumstances are:

Recreational activities have occurred at Bear Lake Reservoir but ceased due to the requirements of Section 115825, the Lake Alpine Water District will significantly increase water treatment through new water treatment projects at the reservoir before bodily contact can resume, and the district will provide information to the Legislature regarding certain issues to ensure that any recreational uses at the reservoir do not affect the provision of domestic water to district customers.

CHAPTER 375

An act to amend Section 740 of the Welfare and Institutions Code, relating to wards.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 740 of the Welfare and Institutions Code is amended to read:

740. (a) Any minor adjudged to be a ward of the court on the basis that he or she is a person described in Section 602 and who is placed in a community care facility shall be placed in a community care facility within his or her county of residence, unless both of the following apply:

(1) He or she has identifiable needs requiring specialized care that cannot be provided in a local facility, or his or her needs dictate physical separation from his or her family.

(2) The county of residence agrees to pay the placement county the costs of providing services to the minor, pursuant to Section 1566.25 of the Health and Safety Code.

(b) (1) Before the placement of a minor adjudged to be a ward of the court on the basis that he or she is a person described in Section 602 in any community care facility outside the ward's county of residence, the probation officer of the county making the placement, or in the case of a Youth Authority ward, the parole officer in charge of his or her case, shall send written notice of the placement, including the name of the ward, the juvenile record of the ward (including any known prior offenses), and the ward's county of residence, to the probation officer of the county in which the community care facility is located; with regard to this requirement, it is the intention of the Legislature that the probation officer of the county making the placement, or in the case of a Youth Authority ward, the parole officer in charge of his or her case, shall make his or her best efforts to send, or to hand deliver, the notice at the same time the placement is made. When such a placement is terminated, the probation officer of the county making the placement, or in the case of a Youth Authority ward, the parole officer in charge of his or her case, shall send notice thereof to any person or agency receiving notification of the placement.

(2) When it has been determined that it is necessary for a ward whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program, to be placed in a county other than the ward's parents' or guardians' county of residence, the specific reason the out-of-county placement is necessary shall be documented in the ward's case plan. If the reason is lack of resources in the sending county to meet the specific needs of the ward, those specific resources needs shall be documented in the case plan.

(3) When it has been determined that a ward whose board and care is funded through the Aid to Families with Dependent Children-Foster Care program, is to be placed out-of-county and that the sending county is to maintain responsibility for supervision and visitation of the ward, the sending county shall develop a plan of supervision and visitation activities to be performed, and shall specify that the sending county is responsible for performing those activities. The sending county shall send to the receiving county a copy of the plan of supervision and visitation, in addition to the notice of placement required in paragraph (1), prior to placement of the ward. If placement occurs on a holiday or weekend, the plan of supervision and visitation and the notice of placement shall be provided to the receiving county on or before the end of the next business day.

(4) When it has been determined that a ward whose placement is funded through the Aid to Families with Dependent Children-Foster

Care program, is to be placed out-of-county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the ward, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the ward, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the ward in the receiving county. Additionally, the notice of placement required by paragraph (1) shall be provided to the receiving county prior to placement of the ward in that county. Upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county.

(5) The probation department of a receiving county that has a group home in which a minor is placed by the probation department of another county, after adjudication of the minor for any felony offense, may disclose to the sheriff of the receiving county or to the municipal police department of the city in which the group home is located, the name of the minor, the felony offense or offenses for which the minor has been adjudicated, and the address of the group home. This information shall be utilized only for law enforcement purposes and may not be utilized in any manner that is inconsistent with the rehabilitative program in which the minor has been placed or with the progress the minor may be making in the placement program. Notwithstanding any other provision of law, the information provided by the probation department to a law enforcement agency under this paragraph may be provided to other law enforcement personnel for the limited law enforcement purposes described in this paragraph, but shall otherwise remain confidential.

(c) A minor, the parent or guardian of any minor, and counsel representing a minor or the parent or guardian of a minor may petition the juvenile court for the review of any placement decision concerning the minor made by the probation officer pursuant to subdivision (a). The petition shall state the petitioner's relationship to the minor and shall set forth in concise language the grounds on which the review is sought. The court shall order that a hearing shall be held on the petition and shall give prior notice, or cause prior notice to be given, to the persons and by the means as prescribed by Section 776, and, in instances in which the means of giving notice is not prescribed by that section, then by any means as the court prescribes.

(d) If a minor is placed in a community care facility out of his or her county of residence and is then arrested and placed in juvenile hall pending a jurisdictional hearing, the county of residence shall pay to the probation department of the county of placement all reasonable costs

resulting directly from the minor's stay in the juvenile hall, provided that these costs exceed one hundred dollars ($100).

(e) If, as a result of the hearing in subdivision (d), the minor is remanded back to his or her county of residence, the county of residence shall pay to the probation department of the county of placement, in addition to any payment made pursuant to subdivision (d), all reasonable costs resulting directly from transporting the minor to the county of residency, provided that these costs exceed one hundred dollars ($100).

(f) Claims made by the probation department in the county of placement, to the county of residence, pursuant to subdivisions (d) and (e), shall be paid within 30 days of the submission of these claims and the probation department in the county of placement shall bear the remaining expense.

(g) As used in this section:

(1) ''Community care facility'' shall be defined as provided in Section 1502 of the Health and Safety Code.

(2) ''Group home'' has the same meaning as provided in paragraph (1) of subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations.

CHAPTER 376

An act to add Section 1140.1 to the Insurance Code, relating to life insurance.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 1140.1 is added to the Insurance Code, to read:

1140.1. (a) A domestic incorporated life insurer may be organized under the Nonprofit Mutual Benefit Corporation Law. With the prior consent of the commissioner, an existing domestic incorporated life insurer organized under the general corporation law may be converted to a domestic incorporated life insurer under the Nonprofit Mutual Benefit Corporation Law pursuant to Section 911 of the Corporations Code. The consent shall be obtained by filing an application accompanied by any information that the commissioner may require, and by submitting a filing fee of seven thousand dollars ($7,000).

(b) Except as otherwise provided in this code, a domestic incorporated life insurer organized under the Nonprofit Mutual Benefit Corporation Law shall be subject to that law in the same manner as other

corporations organized under that law. In the case of a conflict between the Insurance Code and the Nonprofit Mutual Benefit Corporation Law, the provisions of the Insurance Code shall prevail.

(c) A life insurer organized under the Nonprofit Mutual Benefit Corporation Law shall have the same powers held by, and shall be subject to all provisions of this code applicable to, a domestic incorporated stock life insurer, except for Section 1140. An insurer so organized shall have a surplus (in lieu of paid-in capital and surplus) at least equal to the sum of the paid-in capital and surplus required of a stock insurer admitted for the same classes. In addition, an insurer so organized shall be subject to the same premium tax obligations as a stock insurer.

(d) Officers, directors, and other managers of domestic life insurers organized under the Nonprofit Mutual Benefit Corporation Law shall not be entitled to any rights, preferences, or privileges that are not allowed for the officers, directors, or managers of an insurer of the same class organized under the general corporation law.

(e) For a life insurer organized under the Nonprofit Mutual Benefit Corporation Law, all references in this code to ''shareholders'' shall be interpreted to mean ''members,'' and all references to ''shares,'' ''stocks,'' or ''securities'' shall mean ''memberships,'' as defined in the Nonprofit Mutual Benefit Corporation Law.

(f) The issuance of memberships to policyholders that are not natural persons shall be subject to the provisions of Article 8 (commencing with Section 820) of Chapter 1 of Part 2 of Division 1. A domestic incorporated life insurer organized under the Nonprofit Mutual Benefit Corporation Law shall have at least one member. The redemption of memberships, other than for policyholders that are not natural persons, shall be subject to the same rules as those applicable to the payment of dividends by a domestic incorporated stock life insurer.

CHAPTER 377

An act relating to public resources, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. The Legislature authorizes, pursuant to paragraph (2) of subdivision (a) of Section 5919 of the Public Resources Code, the

County of San Bernardino to sell property it owns within the Chino Agricultural Preserve that was purchased with grant funds from the California Wildlife, Coastal, and Park Land Conservation Act (Division 5.8 (commencing with Section 5900) of the Public Resources Code), provided that the sale meets the conditions of subdivision (b) of Section 5919 of the Public Resources Code and all of the following conditions:

(a) The County of San Bernardino uses all the proceeds from the sale only for the acquisition of replacement land within the Chino Agricultural Preserve.

(b) The County of San Bernardino prepares a detailed land plan showing which specific parcels of property acquired with the grant funds will be sold and which specific parcels of property will be acquired, including land acquired or dedicated pursuant to subdivision (c).

(c) The land plan and environmental review demonstrate that there is no net loss in acreage or habitat value as a result of implementation of the plan. If the sale of properties that were acquired with the grant funds, and the acquisition of replacement land as authorized by this subdivision, results in any net loss in acreage or habitat value of protected land, the County of San Bernardino shall acquire or dedicate additional land within the boundaries of the 14,000-acre Chino Agricultural Preserve, as it existed on June 8, 1988, including property surrounding the Chino airport, to make up for that loss and shall conserve all the land acquired or dedicated as authorized by this subdivision in perpetuity for agricultural purposes, including community gardens, agricultural heritage projects, agricultural and wildlife education, or wildlife habitat.

(d) The County of San Bernardino holds a public hearing before the Board of Supervisors for the purpose of reviewing the land plan and taking public comment. The hearing shall be scheduled for a specific time during a regularly scheduled meeting of the board, and shall be separately noticed and publicized.

(e) The County of San Bernardino, prior to closing any real property transactions with respect to the land plan, submits independent appraisals of the land to be sold and the land to be acquired to the Department of Parks and Recreation for concurrence with state appraisal standards. These appraisals shall be made available to the public.

(f) All land acquired or dedicated, including land previously acquired with the grant funds, other than land identified for sale pursuant to the land plan, shall be protected in perpetuity by recordation of agricultural use deed restrictions or agricultural conservation easements at the time of purchase or dedication, and, in the case of properties previously acquired with the grant funds, within 60 days of approval of the land plan by the County of San Bernardino. The County of San Bernardino shall not sell or acquire land pursuant to this section unless and until the San

Bernardino County Board of Supervisors approves the land plan specified in subdivision (b).

(g) All transactions that occur pursuant to this section shall comply with the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the Public Resources Code).

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

In order that the people of the state may have the benefit of a more appropriate use of existing park and open-space lands as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 378

An act to amend Section 22375 of the Education Code, and to amend Section 20195 of the Government Code, relating to the State Teachers' Retirement System.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 22375 of the Education Code is amended to read:

22375. Notwithstanding Part 11 (commencing with Section 15850) of Division 3 of Title 2 of the Government Code, the board may select, purchase, or acquire in the name of the plan, the fee or any lesser interest in real property, improved or unimproved, and may remodel and equip, or construct an office building in the greater metropolitan Sacramento area, including the City of Sacramento, the County of Sacramento, and the eastern part of Yolo County, for the purposes of establishing a permanent headquarters facility for the system.

SEC. 2. Section 20195 of the Government Code is amended to read:

20195. (a) The board may select, purchase, or acquire in the name of the system, the fee or any lesser interest in real property, improved or unimproved, and may construct or remodel, and equip, an office building, including appropriate satellite structures, in the County of Sacramento, California, for its use and for the use of other state retirement systems excepting the State Teachers' Retirement System, other departments, boards, and agencies of the state, or appropriate private commercial entities as space may be available from time to time.

The office building and satellite structures shall conform to the Capital Master Plan if located within an area subject to the plan.

(b) If the board acquires bare land, improvements shall be constructed according to plans approved by the State Public Works Board and Department of General Services.

(c) If the board acquires land with improvements thereon, the improvements shall be remodeled or completed in accordance with plans approved by the State Public Works Board and Department of General Services.

(d) If condemnation of the property selected is necessary, the board may elect to deposit the funds deemed necessary with the Treasurer. The funds are appropriated for purchase of the selected property subject to the Property Acquisition Law.

(e) Work on all projects shall be done under contract awarded to the lowest responsible bidder pursuant to bidding procedures set forth in Part 2 (commencing with Section 10100) of Division 2 of the Public Contract Code.

CHAPTER 379

An act to amend Section 31725.6 of, and to add Section 31725.65 to, the Government Code, relating to county employees' retirement, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 31725.6 of the Government Code is amended to read:

31725.6. (a) When the board finds, based on medical advice, that a member in county service is incapacitated for the performance of the member's duties, the board shall determine, based upon that medical advice, whether the member is capable of performing other duties. If the board determines that a member, although incapacitated for the performance of the member's duties, is capable of performing other duties, the board shall inform the appropriate agency in county service of its findings and request that the agency immediately initiate a suitable rehabilitation program for the member pursuant to Section 139.5 of the Labor Code, whereby the member could become qualified for assignment to a position in county service consistent with the rehabilitation program.

(b) When the appropriate agency in county service receives such a request from the board, the agency shall immediately refer the member to a qualified rehabilitation representative for vocational evaluation. During the course of the evaluation, the rehabilitation representative shall consult with the appropriate agency in county service to determine what position, if any, in county service would be compatible with the member's aptitudes, interests, and abilities and whether rehabilitation services will enable the member to become qualified to perform the duties of the position.

(c) Upon completion of the vocational evaluation of the member, the rehabilitation representative shall develop a suitable rehabilitation plan and submit the plan for concurrence by the member and the appropriate agency in county service and, thereafter, the agency shall forward the plan to the Division of Industrial Accidents for approval pursuant to Section 139.5 of the Labor Code.

(d) Upon receipt of approval of the rehabilitation plan, the appropriate agency in county service shall notify the board that the agency is either proceeding to implement an approved rehabilitation plan that will qualify the member for a position in county service specified in the plan or is unable to provide a position in county service compatible with the approved rehabilitation plan.

(e) Upon commencement of service by the member in the position specified in the approved rehabilitation plan, the member shall not be paid the disability retirement allowance to which the member would otherwise be entitled during the entire period that the member remains in county service. However, if the compensation rate of the position specified in the approved rehabilitation plan is less than the compensation rate of the position for which the member was incapacitated, the board shall, in lieu of the disability retirement allowance, pay to the member a supplemental disability allowance in an amount equal to the difference between the compensation rate of the position for which the member was incapacitated, applicable on the date of the commencement of service by the member in the position specified in the approved rehabilitation plan, and the compensation rate of the position specified in the plan, applicable on the same date. The supplemental disability allowance shall be adjusted annually to equal the difference between the current compensation rate of the position for which the member was incapacitated and the current compensation of the position specified in the approved rehabilitation plan. The supplemental disability allowance payments shall commence upon suspension of the disability retirement allowance and the amount of the payments shall not be greater than the disability retirement allowance to which the member would otherwise be entitled. Supplemental disability allowance payments made pursuant to this section shall be considered

as a charge against the county advance reserve for current service, and all of these payments received by a member shall be considered as a part of the member's compensation within the meaning of Section 31460.

(f) From the time that the member is eligible to receive a disability retirement allowance until the appropriate agency is able to provide the position in county service specified in the approved rehabilitation plan, and the member has commenced service in that position, the disability retirement allowance to which the member is entitled under this article shall be paid. Upon commencement of service by the member in the position specified in the approved rehabilitation plan, the period during which the member was receiving disability retirement payments shall not be considered as breaking the continuity of the member's service, and the rate of the member's contributions shall continue to be based on the same age at entrance into the retirement system as the member's rates were based on prior to the date of the member's disability. The member's accumulated contributions shall not be reduced as a result of the member receiving the disability retirement payments, but shall be increased by the amount of interest that would have accrued had the member not been retired.

(g) Notwithstanding Section 31560, a member whose principal duties, while serving in the position for which the member was incapacitated, consisted of activities defined in Section 31469.3 shall, upon commencement of service by the member in the position specified in the approved rehabilitation plan, continue to be considered as satisfying the requirements of Section 31560, notwithstanding the actual duties performed during the entire period that the member remains in county service.

(h) If, within one year from the date that the member has been eligible for a disability retirement allowance, the appropriate agency in county service has offered to the member, in writing, the position specified in the rehabilitation plan which had previously been concurred, in writing, by the member and approved by the Division of Industrial Accidents pursuant to Section 139.5 of the Labor Code, the member shall, within 30 days of receipt of the notice, report for duty at the location specified in the notice. If the member refuses to report for duty within the time specified, the appropriate agency in county service may apply to the board to have the member's allowance discontinued. The board shall be authorized to discontinue the member's disability retirement allowance if based upon substantial evidence of the refusal of the member to report to work without reasonable cause. However, the board shall not be authorized to impair any other of the rights or retirement benefits to which the member would otherwise be entitled.

(i) This section shall apply only to members who were incapacitated for the performance of the member's duties prior to January 1, 2004, and who are eligible to retire for service-connected disability.

SEC. 2. Section 31725.65 is added to the Government Code, to read:

31725.65. (a) When the board finds, based on medical advice, that a member in county service is incapacitated for the performance of the member's duties, the board shall determine, based upon that medical advice, whether the member may be capable of performing other duties. If the board determines that a member, although incapacitated for the performance of the member's duties, is capable of performing other duties, the board shall notify the appropriate agency in county service of its findings.

(b) When the appropriate agency in county service receives that notification from the board, the agency shall immediately inform the member of any vacant county positions that may be suitable for the member, consistent with his or her disability, and shall consult with the member in an effort to develop a reemployment plan that shall identify what position, if any, in county service would be compatible with the member's aptitudes, interests, and abilities.

(c) Upon approval by the member of the reemployment plan, the appropriate agency in county service shall notify the board that the agency is proceeding to implement the approved reemployment plan.

(d) Upon commencement of service by the member in the position specified in the approved reemployment plan, the member shall not be paid the disability retirement allowance to which the member would otherwise be entitled during the entire period that the member remains in county service. However, if the compensation rate of the position specified in the approved reemployment plan is less than the compensation rate of the position for which the member was incapacitated, the board shall, in lieu of the disability retirement allowance, pay to the member a supplemental disability allowance in an amount equal to the difference between the compensation rate of the position for which the member was incapacitated, applicable on the date of the commencement of service by the member in the position specified in the approved reemployment plan, and the compensation rate of the position specified in the plan, applicable on the same date. The supplemental disability allowance shall be adjusted annually to equal the difference between the current compensation rate of the position for which the member was incapacitated and the current compensation of the position specified in the approved reemployment plan. The supplemental disability allowance payments shall commence upon suspension of the disability retirement allowance and the amount of the payments shall not be greater than the disability retirement allowance to which the member would otherwise be entitled. Supplemental disability

allowance payments made pursuant to this section shall be considered as a charge against the county advance reserve for current service, and all of these payments received by a member shall be considered as a part of the member's compensation within the meaning of Section 31460.

(e) From the time that the member is eligible to receive a disability retirement allowance until the appropriate agency is able to provide the position in county service specified in the approved reemployment plan, and the member has commenced service in that position, the disability retirement allowance to which the member is entitled under this article shall be paid. Upon commencement of service by the member in the position specified in the approved reemployment plan, the period during which the member was receiving disability retirement payments shall not be considered as breaking the continuity of the member's service, and the rate of the member's contributions shall continue to be based on the same age at entrance into the retirement system as the member's rates were based on prior to the date of the member's disability. The member's accumulated contributions shall not be reduced as a result of the member receiving the disability retirement payments, but shall be increased by the amount of interest that would have accrued had the member not been retired.

(f) Notwithstanding Section 31560, a member whose principal duties, while serving in the position for which the member was incapacitated, consisted of activities defined in Section 31469.3 shall, upon commencement of service by the member in the position specified in the approved reemployment plan, continue to be considered as satisfying the requirements of Section 31560, notwithstanding the actual duties performed during the entire period that the member remains in county service.

(g) This section shall apply only to members who are incapacitated for the performance of the member's duties on or after January 1, 2004, and who are eligible to retire for service-connected disability.

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

In order to provide counties with new procedures to provide disabled workers with alternate work in conjunction with disability retirement benefits, in light of the recent repeal of the former procedures, it is necessary for this act to take effect immediately.

CHAPTER 380

An act to amend Section 6159 of the Government Code, to amend Section 1463.007 of the Penal Code, and to amend Sections 19280 and 19283 of the Revenue and Taxation Code, relating to courts.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 6159 of the Government Code is amended to read:

6159. (a) As used in this section:

(1) ''Credit card'' means any card, plate, coupon book, or other credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or services on credit.

(2) ''Card issuer'' means any person, or his or her agent, who issues a credit card and purchases credit card drafts.

(3) ''Cardholder'' means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(4) ''Debit card'' means a card or other means of access to a debit cardholder's account that may be used to initiate electronic funds transfers from that account.

(5) ''Draft purchaser'' means any person who purchases credit card drafts.

(6) ''Electronic funds transfer'' means any method by which a person permits electronic access to, and transfer of, money held in an account by that person.

(b) Subject to subdivisions (c) and (d), a court, city, county, city and county, or other public agency may authorize the acceptance of a credit card, debit card, or electronic funds transfer for any of the following:

(1) The payment for the deposit of bail for any offense not declared to be a felony or for any court-ordered fee, fine, forfeiture, penalty, or assessment. Use of a card or electronic funds transfer pursuant to this paragraph may include a requirement that the defendant be charged any administrative fee charged by the company issuing the card or processing the account for the cost of the transaction.

(2) The payment of a filing fee or other court fee.

(3) The payment of any towage or storage costs for a vehicle that has been removed from a highway, or from public or private property, as a result of parking violations.

(4) The payment of child, family, or spousal support, including reimbursement of public assistance, related fees, costs, or penalties, with the authorization of the cardholder or accountholder.

(5) The payment for services rendered by any city, county, city and county, or other public agency.

(6) The payment of any fee, charge, or tax due a city, county, city and county, or other public agency.

(c) A court desiring to authorize the use of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) shall obtain the approval of the Judicial Council. A city desiring to authorize the use of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) shall obtain the approval of its city council. Any other public agency desiring to authorize the use of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) shall obtain the approval of the governing body that has fiscal responsibility for that agency.

(d) After approval is obtained, a contract may be executed with one or more credit card issuers, debit card issuers, electronic funds transfer processors, or draft purchasers. The contract shall provide for:

(1) The respective rights and duties of the court, city, county, city and county, or other public agency and card issuer, funds processor, or draft purchaser regarding the presentment, acceptability, and payment of credit and debit card drafts and electronic funds transfer requests.

(2) The establishment of a reasonable means by which to facilitate payment settlements.

(3) The payment to the card issuer, funds processor, or draft purchaser of a reasonable fee or discount.

(4) Any other matters appropriately included in contracts with respect to the purchase of credit and debit card drafts and processing of electronic funds transfer requests as may be agreed upon by the parties to the contract.

(e) The honoring of a credit card, debit card, or electronic funds transfer pursuant to subdivision (b) hereof constitutes payment of the amount owing to the court, city, county, city and county, or other public agency as of the date the credit or debit card is honored or the electronic funds transfer is processed, provided the credit or debit card draft is paid following its due presentment to a card issuer or draft purchaser or the electronic funds transfer is completed with transfer to the agency requesting the transfer.

(f) If any credit or debit card draft is not paid following due presentment to a card issuer or draft purchaser or is charged back to the court, city, county, city and county, or other public agency for any reason, any record of payment made by the court, city, or other public agency honoring the credit or debit card shall be void. If any electronic funds

transfer request is not completed with transfer to the agency requesting the transfer or is charged back to the agency for any reason, any record of payment made by the agency processing the electronic funds transfer shall be void. Any receipt issued in acknowledgment of payment shall also be void. The obligation of the cardholder or accountholder shall continue as an outstanding obligation as if no payment had been attempted.

(g) Notwithstanding Title 1.3 (commencing with Section 1747) of Part 4 of Division 3 of the Civil Code, a court, city, county, city and county, or any other public agency may impose a fee for the use of a credit or debit card or electronic funds transfer, not to exceed the costs incurred by the agency in providing for payment by credit or debit card or electronic funds transfer. These costs may include, but shall not be limited to, the payment of fees or discounts as specified in paragraph (3) of subdivision (d). Any fee imposed by a court pursuant to this subdivision shall be approved by the Judicial Council. Any fee imposed by any other public agency pursuant to this subdivision for the use of a credit or debit card or electronic funds transfer shall be approved by the governing body responsible for the fiscal decisions of the public agency.

(h) Fees or discounts provided for under paragraph (3) of subdivision (d) shall be deducted or accounted for prior to any statutory or other distribution of funds received from the card issuer, funds processor, or draft purchaser to the extent not recovered from the cardholder or accountholder pursuant to subdivision (g).

(i) The Judicial Council may enter into a master agreement with one or more credit or debit card issuers, funds processors, or draft purchasers for the acceptance and payment of credit or debit card drafts and electronic funds transfer requests received by the courts. Any court may join in any of these master agreements or may enter into a separate agreement with a credit or debit card issuer, funds processor, or draft purchaser.

SEC. 2. Section 1463.007 of the Penal Code, as amended by Section 1 of Chapter 62 of the Statutes of 2002, is amended to read:

1463.007. Notwithstanding any other provision of law, any county or court that implements or has implemented a comprehensive program to identify and collect delinquent fees, fines, forfeitures, penalties, and assessments with or without a warrant having been issued against the alleged violator, if the base fees, fines, forfeitures, penalties, and assessments are delinquent, may deduct and deposit in the county treasury or in the trial court operations fund the cost of operating that program, excluding capital expenditures, from any revenues collected thereby prior to making any distribution of revenues to other governmental entities required by any other provision of law. Any county or court may establish a minimum base fee, fine, forfeiture,

penalty, or assessment amount for inclusion in the program. This section applies to costs incurred by a court or a county on or after June 30, 1997, and prior to the implementation of a time payments agreement, and shall supersede any prior law to the contrary. This section does not apply to a defendant who is paying fees, fines, forfeitures, penalties, or assessments through time payments, unless he or she is delinquent in making payments according to the agreed-upon payment schedule. For purposes of this section, a comprehensive collection program is a separate and distinct revenue collection activity and shall include at least 10 of the following components:

(a) Monthly bill or account statements to all debtors.

(b) Telephone contact with delinquent debtors to apprise them of their failure to meet payment obligations.

(c) Issuance of warning letters to advise delinquent debtors of an outstanding obligation.

(d) Requests for credit reports to assist in locating delinquent debtors.

(e) Access to Employment Development Department employment and wage information.

(f) The generation of monthly delinquent reports.

(g) Participation in the Franchise Tax Board's Interagency Intercept Collections Program.

(h) The use of Department of Motor Vehicle information to locate delinquent debtors.

(i) The use of wage and bank account garnishments.

(j) The imposition of liens on real property and proceeds from the sale of real property held by a title company.

(k) The filing of a claim or the filing of objections to the inclusion of outstanding fines and forfeitures in bankruptcy proceedings.

(*l*) Coordination with the probation department to locate debtors who may be on formal or informal probation.

(m) The initiation of drivers' license suspension actions where appropriate.

(n) The capability to accept credit card payments.

(o) Participation in the Franchise Tax Board's Court-Ordered Debt Collections Program.

(p) Contracting with one or more private debt collectors.

(q) The use of local, regional, state, or national skip tracing or locator resources or services to locate delinquent debtors.

SEC. 3. Section 19280 of the Revenue and Taxation Code is amended to read:

19280. (a) (1) Fines, state or local penalties, forfeitures, restitution fines, restitution orders, or any other amounts imposed by a superior or municipal court of the State of California upon a person or any other entity that is due and payable in an amount totaling no less than two

hundred fifty dollars ($250), in the aggregate, for criminal offenses, including all offenses involving a violation of the Vehicle Code except offenses relating to parking or registration or offenses by pedestrians or bicyclists, may, no sooner than 90 days after payment of that amount becomes delinquent, be referred by the superior court, the county, or the state to the Franchise Tax Board for collection under guidelines prescribed by the Franchise Tax Board.

(2) For purposes of this subdivision:

(A) The amounts referred by the superior court, the county, or state under this section may include any amounts that a government entity may add to the court-imposed obligation as a result of the underlying offense, trial, or conviction. For purposes of this article, those amounts shall be deemed to be imposed by the court.

(B) Restitution orders may be referred to the Franchise Tax Board only by a government entity, as agreed upon by the Franchise Tax Board, provided that all of the following apply:

(i) The government entity has the authority to collect on behalf of the state or the victim.

(ii) The government entity shall be responsible for distributing the restitution order collections, as appropriate.

(iii) The government entity shall ensure, in making the referrals and distributions, that it coordinates with any other related collection activities that may occur by superior courts, counties, or other state agencies.

(iv) The government entity shall ensure compliance with laws relating to the reimbursement of the State Restitution Fund.

(C) The Franchise Tax Board shall establish criteria for referral, which shall include setting forth a minimum dollar amount subject to referral and collection.

(b) The Franchise Tax Board, in conjunction with the Judicial Council, shall seek whatever additional resources are needed to accept referrals from all 58 counties or superior courts.

(c) Upon written notice to the debtor from the Franchise Tax Board, any amount referred to the Franchise Tax Board under subdivision (a) and any interest thereon, including any interest on the amount referred under subdivision (a) that accrued prior to the date of referral, shall be treated as final and due and payable to the State of California, and shall be collected from the debtor by the Franchise Tax Board in any manner authorized under the law for collection of a delinquent personal income tax liability, including, but not limited to, issuance of an order and levy under Article 4 (commencing with Section 706.070) of Chapter 5 of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure in the manner provided for earnings withholding orders for taxes.

(d) (1) Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), and Part 11 (commencing with Section 23001) shall apply to amounts referred under this article in the same manner and with the same force and effect and to the full extent as if the language of those laws had been incorporated in full into this article, except to the extent that any provision is either inconsistent with this article or is not relevant to this article.

(2) Any information, information sources, or enforcement remedies and capabilities available to the court or the state referring to the amount due described in subdivision (a), shall be available to the Franchise Tax Board to be used in conjunction with, or independent of, the information, information sources, or remedies and capabilities available to the Franchise Tax Board for purposes of administering Part 10 (commencing with Section 17001), this part, Part 10.7 (commencing with Section 21001), or Part 11 (commencing with Section 23001).

(e) The activities required to implement and administer this part shall not interfere with the primary mission of the Franchise Tax Board to administer Part 10 (commencing with Section 17001) and Part 11 (commencing with Section 23001).

(f) For amounts referred for collection under subdivision (a), interest shall accrue at the greater of the rate applicable to the amount due being collected or the rate provided under Section 19521. When notice of the amount due includes interest and is mailed to the debtor and the amount is paid within 15 days after the date of notice, interest shall not be imposed for the period after the date of notice.

(g) In no event shall a collection under this article be construed as a payment of income taxes imposed under Part 10 (commencing with Section 17001) or Part 11 (commencing with Section 23001).

SEC. 4. Section 19283 of the Revenue and Taxation Code is amended to read:

19283. The Department of Justice, in consultation with the Franchise Tax Board, shall examine ways to enhance the use and effectiveness of this article through integration with the Department of Justice's Wanted Persons System and shall report the findings and recommendations to the Legislature on or before January 1, 2002.

CHAPTER 381

An act to amend Section 11521.2 of the Insurance Code, relating to grants and annuities societies.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 11521.2 of the Insurance Code is amended to read:

11521.2. (a) The reserve required by the table of commensurate values for each annuity contract issued must be invested in investments specified in Sections 1170 through 1182 except that a certificate holder may invest in securities listed and traded on the New York Stock Exchange, the American Stock Exchange or regional stock exchanges or the National Market System of the Nasdaq Stock Market or successors to such exchanges or market having the same qualifications, to the extent of the lesser of net worth (assets over liabilities and reserves) of the certificate holder or 50 percent of these general investments. This section does not permit investment in options or commodity exchanges.

(b) The certificate holder may invest in other investments as permitted by and subject to the written consent of the commissioner.

CHAPTER 382

An act to amend Section 12309.5 of the Elections Code, relating to elections.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 12309.5 of the Elections Code is amended 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 and procedures concerning the opening and closing of polling locations on election day. Procedures shall be developed that, notwithstanding long lines or delays at a polling location, ensure that all eligible voters who arrive at the polling location prior to closing time are allowed to cast a ballot.

(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 the 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 shall consist 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 the submission of the recommendations 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 383

An act to add Section 5024.5 to the Penal Code, relating to correctional facilities.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 5024.5 is added to the Penal Code, to read:

5024.5. (a) The Department of Corrections shall adopt policies, procedures, and criteria to identify selected medication categories for the development of utilization protocols based on best practices, and the use of generic and therapeutic substitutes, as appropriate.

(b) The department shall develop utilization and treatment protocols for select medication categories based on defined priority criteria, including, but not limited to, the cost of the medications.

(c) On or before April 1, 2006, the department shall provide information, as part of the fiscal committee budget hearings for the 2006–07 budget year, on the impact of the adoption of these protocols.

(d) The department shall coordinate the implementation of this section with the Department of General Services' prescription drug bulk purchasing program pursuant to Chapter 12 (commencing with Section 14977) of Part 5.5 of Division 3 of Title 2 of the Government Code, in order to better achieve the goals and intent of that program.

(e) It is the intent of the Legislature that the department shall complete the implementation of this section utilizing the existing resources of the department.

CHAPTER 384

An act to amend Section 6140 of the Business and Professions Code, relating to attorneys.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 6140 of the Business and Professions Code is amended to read:

6140. (a) The board shall fix the annual membership fee for active members at a sum not exceeding three hundred ten dollars ($310).

(b) The annual membership fee for active members is payable on or before the first day of February of each year. If the board finds it appropriate and feasible, it may provide by rule for payment of fees on an installment basis with interest, by credit card, or other means, and may charge members choosing any alternative method of payment an additional fee to defray costs incurred by that election.

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

CHAPTER 385

An act to amend Sections 10102 and 10103 of, and to add Section 10103.5 to, the Insurance Code, relating to homeowners' insurance.

[Approved by Governor August 27, 2004. Filed with Secretary of State August 30, 2004.]

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

SECTION 1. Section 10102 of the Insurance Code is amended to read:

10102. (a) The disclosure required by Section 10101 shall be in no less than 10-point type face and shall be provided prior to, or concurrent with, the application for or initial renewal of a policy of residential property insurance. In the event that an application is made by telephone, an insurer that mails a copy of the disclosure within three business days shall be in compliance with this section. For policies issued on or after July 1, 1993, at the time of the original application, the agent or insurer shall obtain the applicant's signature acknowledging receipt of the disclosure form within 60 days of the date of the application. When the insurer or agent establishes delivery of the disclosure form by obtaining the signature of the applicant or insured, or when an insurer or agent provides the applicant with the disclosure form and the applicant does not return a signed acknowledgment of receipt within 60 days of the date it was provided, there shall be a conclusive presumption that the insurer or agent has complied with the disclosure requirement of this chapter. The insurer or agent shall have the burden of demonstrating in accordance with California Rules of Evidence that the disclosure was provided to the applicant or insured. A signature shall not be required at the time of renewal.

If the disclosure is mailed to the named insured or applicant, it shall be mailed to the mailing address shown on the policy of residential property insurance or to the address requested by the applicant. First-class mail shall be deemed adequate for proof of mailing. The insurer shall have the burden of demonstrating in accordance with California Rules of Evidence that the disclosure was mailed to the applicant or insured.

The disclosure shall contain the following language:

CALIFORNIA RESIDENTIAL PROPERTY INSURANCE DISCLOSURE

This disclosure is required by California law (Section 10102 of the Insurance Code). It describes the principal forms of insurance coverage in California for residential dwellings. It also identifies the form of dwelling coverage you have purchased or selected.

This disclosure form contains only a general description of coverages and is not part of your residential property insurance policy. Only the specific provisions of your policy will determine whether a particular loss is covered and, if so, the amount payable. Regardless of which type of coverage you purchase, your policy may exclude or limit certain risks.

READ YOUR POLICY CAREFULLY. If you do not understand any part of it or have questions about what it covers, contact your insurance agent or company. You may also call the California Department of Insurance consumer information line at (____).

The cost to rebuild your home may be very different from the market value of your home since reconstruction is based primarily on the cost of labor and materials. Many factors can affect the cost to rebuild your home, including the size of your home, the type of construction, and any unique features. Please review the following coverages carefully. If you have questions regarding the level of coverage in your policy, please contact your insurance agent or company. Additional coverage may be available for an additional premium.

FORMS OF COVERAGE FOR DWELLINGS	Dwelling Coverage selected or purchased
GUARANTEED REPLACEMENT COST COVERAGE WITH FULL BUILDING CODE UPGRADE PAYS REPLACEMENT COSTS WITHOUT REGARD TO POLICY LIMITS, AND INCLUDES COSTS RESULTING FROM CODE CHANGES. In the event of any covered loss to your home, the insurance company will pay the full amount needed to repair or replace the damaged or destroyed dwelling with like or equivalent construction regardless of policy limits. Your policy will specify whether you must actually repair or replace the damaged or destroyed dwelling in order to recover guaranteed replacement cost. The amount of recovery will be reduced by any deductible you have agreed to pay. This coverage includes all additional costs of repairing or replacing your damaged or destroyed dwelling to comply with any new building standards (such as building codes or zoning laws) required by government agencies and in effect at the time of rebuilding. To be eligible to recover full guaranteed replacement costs with building code upgrade, you must insure the dwelling to its full replacement cost at the time the policy is issued, with possible periodic increases in the amount of coverage to adjust for inflation and increases in building costs; you must permit inspections of the dwelling by the insurance company; and you must notify the insurance company about any alterations that increase the value of the insured dwelling by a certain amount (see your policy for that amount).	
GUARANTEED REPLACEMENT COST COVERAGE WITH LIMITED OR NO BUILDING CODE UPGRADE PAYS REPLACEMENT COSTS WITHOUT REGARD TO POLICY LIMITS BUT LIMITS OR EXCLUDES COSTS RESULTING FROM CODE CHANGES. In the event of any covered loss to your home, the insurance company will pay the full amount needed to repair or replace the damaged or destroyed dwelling with like or equivalent construction regardless of policy limits. Your policy will specify whether you must actually repair or replace the damaged or destroyed dwelling in order to recover guaranteed replacement cost. The amount of recovery will be reduced by any deductible you have agreed to pay. This coverage does not include all additional costs of repairing or replacing your damaged or destroyed dwelling to comply with any new building standards (such as building codes or zoning laws) required by government agencies and in effect at the time of rebuilding. Consult your policy for the applicable exclusions or limits with respect to these costs. To be eligible to recover full guaranteed replacement cost with limited or no building code upgrade, you must insure the dwelling to its full replacement cost at the time the policy is issued, with possible periodic increases in the amount of coverage to adjust for inflation and increases in building costs; you must permit an inspection of the dwelling by the insurance company; and you must notify the insurance company about any alterations that increase the value of the insured dwelling by a certain amount (see your policy for that amount).	
LIMITED REPLACEMENT COST COVERAGE WITH AN ADDITIONAL PERCENTAGE PAYS REPLACEMENT COSTS UP TO A SPECIFIED AMOUNT ABOVE THE POLICY LIMIT. In the event of any covered loss to your home, the insurance company will pay to repair or replace the damaged or destroyed dwelling with like or equivalent construction up to a specified percentage over the policy's limits. See the	

FORMS OF COVERAGE FOR DWELLINGS	Dwelling Coverage selected or purchased
declarations page of your policy for the limit that applies to your dwelling. Your policy will specify whether you must actually repair or replace the damaged or destroyed dwelling in order to recover this benefit. The amount of recovery will be reduced by any deductible you have agreed to pay. To be eligible for this coverage, you must insure the dwelling to its full replacement cost at the time the policy is issued, with possible periodic increases in the amount of coverage to adjust for inflation; you must permit an inspection of the dwelling by the insurance company; and you must notify the insurance company about any alterations that increase the value of the insured dwelling by a certain amount (see your policy for that amount). Read your declaration page to determine whether your policy includes coverage for building code upgrades.	
LIMITED REPLACEMENT COST COVERAGE WITH NO ADDITIONAL PERCENTAGE PAYS REPLACEMENT COSTS UP TO POLICY LIMITS ONLY. In the event of any covered loss to your home, the insurance company will pay to repair or replace the damaged or destroyed dwelling with like or equivalent construction only up to the policy's limit. See the declarations page of your policy for the limit that applies to your dwelling. Your policy will specify whether you must actually repair or replace the damaged or destroyed dwelling in order to recover this benefit. The amount of recovery will be reduced by any deductible you have agreed to pay. To be eligible to recover this benefit, you must insure the dwelling to [company shall denote percentage] [ ] percent of its replacement cost at the time of loss. Read your declaration page to determine whether your policy includes coverage for building code upgrades.	
ACTUAL CASH VALUE COVERAGE PAYS THE FAIR MARKET VALUE OF THE DWELLING AT THE TIME OF THE LOSS, OR THE COST TO REPAIR, REBUILD, OR REPLACE THE DAMAGED OR DESTROYED DWELLING WITH LIKE KIND AND QUALITY CONSTRUCTION, UP TO THE POLICY LIMIT. In the event of any covered loss to your home, the insurance company will pay either the fair market value of the damaged or destroyed dwelling (excluding the value of land) at the time of the loss or the cost to repair, rebuild, or replace the damaged or destroyed dwelling with like kind and quality construction up to the policy limit, with possible consideration of physical depreciation. The amount of recovery will be reduced by any deductible you have agreed to pay. Read your declaration page to determine whether your policy includes coverage for building code upgrades.	
BUILDING CODE UPGRADE—ORDINANCE AND LAW COVERAGE PAYS, UP TO LIMITS SPECIFIED IN YOUR POLICY, ADDITIONAL COSTS REQUIRED TO BRING THE DWELLING "UP TO CODE." In the event of any covered loss, the insurance company will pay any additional costs, up to the stated limits, of repairing or replacing a damaged or destroyed dwelling to conform with any building standards such as building codes or zoning laws required by government agencies and in effect at the time of the loss or rebuilding (see your policy).	

(b) The agent or insurer shall indicate on the disclosure form which category of coverage the applicant or insured has selected or purchased.

(c) The disclosure statement may contain additional provisions not in conflict with or in derogation of the foregoing.

(d) Following the issuance or initial renewal of the policy of residential property insurance, the insurer shall provide the disclosure statement to the insured on an every-other-year basis at the time of renewal. The disclosure required by this section may be transmitted with the material required by Section 10086.1.

(e) No policy of residential property insurance may be initially issued on and after January 1, 1993, as guaranteed replacement cost coverage if it contains any maximum limitation of coverage based on any set dollar limits, percentage amounts, construction cost limits, indexing, or any other preset maximum limitation for covered damage to the insured dwelling. The limitations referred to in this section are solely applicable to dwelling structure coverages. Endorsements covering additional risks to the insurer's dwelling structure coverage may have internal limits as long as those endorsements are not called guaranteed replacement cost coverage.

(f) On and after July 1, 1993, no policy of residential property insurance may be renewed as guaranteed replacement cost coverage if it contains any maximum limitation of coverage based on any set dollar limits, percentage amounts, construction cost limits, indexing, or any other preset maximum limitation for covered damage to the insured dwelling. The limitations referred to in this section are solely applicable to dwelling structure coverages. Endorsements covering additional risks to the insurer's dwelling structure coverage may have internal limits as long as those endorsements are not called guaranteed replacement cost coverage.

(g) Coverage provided for building code upgrades by a policy of residential property insurance shall be applicable to building codes, ordinances, standards, or laws only to the extent that those codes, ordinances, standards, or laws do not impose stricter standards on the property on the basis of the level of insurance coverage applicable to the property.

(h) The disclosure required by Section 10101 shall also be provided to the mortgagor in the event that a policy is forced placed by an insurer at the request of a mortgagee. In such cases, neither the insurer nor the mortgagee shall be required to obtain a signature from the mortgagor. No disclosure shall be required to be provided with respect to blanket policies issued to a mortgagee, and designed to provide interim coverage for losses occurring prior to the mortgagee obtaining knowledge of the lapse of the policy and prior to placement of a policy on behalf of the mortgagor.

(i) On and after July 1, 1994, insurers shall add to the disclosure, in no less than 10-point type the following statement:

This disclosure form does not explain the types of contents coverage (furniture, clothing, etc.) provided by your policy. Some policies do not replace contents with new items, but instead, only pay for the current market value of an item. If you have any questions, contact your insurer or agent.

(j) No later than December 1, 2005, the commissioner shall report to the Governor and the Legislature on the status of the issues regarding residential property insurance and the effectiveness of the California Residential Property Insurance Disclosure.

SEC. 2. Section 10103 of the Insurance Code is amended to read:

10103. (a) No policy of residential property insurance may be issued or renewed in this state unless it provides the following information on the declarations page of the policy:

(1) The limits of liability for the structure.

(2) The following statement regarding the valuation of the structure: ''The limit of liability for this structure (Coverage A) is based on an estimate of the cost to rebuild your home, including an approximate cost for labor and materials in your area, and specific information that you have provided about your home.''

(3) Limits of liability for personal property.

(4) Deductibles.

(5) Whether the policy provides coverage for the increased costs of repairing or replacing damage to the insured dwelling caused by a covered loss because of building ordinances or laws regulating the repair. In the event that no coverage is provided for repairs that result from new building ordinances or laws, the insurer shall include in no less than 10-point typeface the following statement: ''THIS POLICY DOES NOT INCLUDE BUILDING CODE UPGRADE COVERAGE.''

(b) In the event that the policy does include code upgrade coverage, it shall either:

(1) State this on the declaration page, and denote any applicable limits.

(2) State this on a separate disclosure form attached to the declarations page, if the separate disclosure form meets the following standards:

(A) It is printed in not less than 10-point typeface.

(B) It denotes any applicable limits on the amount of coverage.

(C) It denotes restrictions, if any, on coverage for compliance with applicable building codes which take effect after the date of loss but prior to the issuance of required building permits.

SEC. 3. Section 10103.5 is added to the Insurance Code, to read:

10103.5. (a) Every California Residential Property Insurance Disclosure shall be accompanied by a California Residential Property Insurance Bill of Rights. If the insurer provides the insured with an electronic copy of a policy, the bill of rights may also be transmitted electronically.

(b) The California Residential Property Insurance Bill of Rights shall be plainly printed in no less than 10-point type. The bill of rights shall contain the following:

"California Residential Property Insurance Bill of Rights

The largest single investment most consumers make is their home and related property. In order to best protect these assets, it is wise for consumers to understand the homeowner's insurance market. Consumers should consider the following:

Read your policy carefully and understand the coverage and limits provided. Homeowner's insurance policies contain sublimits for various coverages such as personal property, debris removal, additional living expense, detached fences, garages, etc.

Keep accurate records of renovations and improvements to the structure of your home, as it could affect your need to increase your coverage.

Maintaining a list of all personal property, pictures, and video equipment may help in the case of a loss. The list should be stored away from your home.

Comparison shop for insurance, as not all policies are the same and coverage and prices vary.

Take time to determine the cost to rebuild or replace your property in today's market. You can seek an independent evaluation of this cost.

You may select a licensed contractor or vendor to repair, replace, or rebuild damaged property covered by the insurance policy.

An agent or insurance company may help you establish policy limits that are adequate to rebuild your home.

Once the policy is in force, contact your agent or insurance company immediately if you believe your policy limits may be inadequate.

A consumer is entitled to receive information regarding homeowner's insurance. The following is a limited overview of information that your insurance company can provide:

The California Residential Property Insurance Disclosure.

An explanation of how your policy limits were established.

The insurance company's customer service telephone number for underwriting, rating, and claims inquiries.

An explanation for any cancellation or nonrenewal of your policy.

A copy of your policy.

The toll-free telephone number and Internet address for reporting complaints and concerns about homeowner's insurance issues to the department's consumer services unit.

In the event of a claim, an itemized, written scope of loss report prepared by the insurer or its adjuster within a reasonable time period.

In the event of a claim, notification of a consumer's rights with respect to the appraisal process for resolving claims disputes.

In the event of a claim, a copy of the Unfair Practices Act and a copy of the Fair Claims Practices Regulations.

The information provided herein is not all inclusive and does not negate or preempt existing California law. If you have any concerns or questions, the officers at our Consumer Hotline are there to help you. Please call them at 1-800-927-HELP (4357) or contact us at www.insurance.ca.gov.''

(c) The bill of rights shall be distributed by all insurers licensed to sell residential property insurance in this state.

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CHAPTER 386

An act to amend Section 379 of the Streets and Highways Code, relating to highways, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 379 of the Streets and Highways Code is amended to read:

379. (a) Route 79 is from:

(1) Route 8 near Descanso to Route 78 near Julian.

(2) Route 78 near Santa Ysabel to the Temecula city limits east of Butterfield Stage Road.

(3) Temecula city limits south of Murrieta Hot Springs Road to Route 74 near Hemet.

(4) Route 74 near Hemet to Route 10 near Beaumont.

(b) Notwithstanding this section, the commission may relinquish to the City of Temecula the portion of Route 79 located within Temecula's city limits, upon terms and conditions the commission finds to be in the best interest of the state.

(c) (1) Any relinquishment agreement shall require that the City of Temecula administer the operation and maintenance of the highways in a manner consistent with professional traffic engineering standards.

(2) Any relinquishment agreement shall require the City of Temecula to ensure that appropriate traffic studies or analysis will be performed to substantiate any decisions affecting the highways.

(3) Any relinquishment agreement shall also require the City of Temecula to provide for public notice and the consideration of public input on the proximate effects of any proposed decision on traffic flow, residences, or businesses, other than a decision on routine maintenance.

(4) Notwithstanding any of its other terms, any relinquishment agreement shall require the City of Temecula to indemnify and hold the department harmless from any liability for any claims made or damages suffered by any person, including a public entity, as a result of any decision made or damages suffered by any person, including a public entity, as a result of any decision made or action taken by the City of Temecula, its officers, employees, contractors, or agent, with respect to the design, maintenance, construction, or operation of that portion of Route 79 that is to be relinquished to the city.

(d) Any relinquishment shall become effective immediately after the county recorder records the relinquishment resolution that contains the

commission's approval of the terms and conditions of the relinquishment.

(e) On and after the effective date of the relinquishment, both of the following shall occur:

(1) The portion of Route 79 relinquished shall cease to be a state highway.

(2) The portion of Route 79 relinquished may not be considered for future adoption under Section 81.

(f) The City of Temecula shall ensure the continuity of traffic flow on the relinquished portion of Route 79, including any traffic signal progression.

(g) For relinquished portions of Route 79, the City of Temecula shall maintain signs directing motorists to the continuation of Route 79.

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 further economic development and improve the quality of life in the City of Temecula, it is necessary that this act take effect immediately.

CHAPTER 387

An act to amend Section 65585.1 of the Government Code, relating to housing.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 65585.1 of the Government Code is amended to read:

65585.1. (a) The San Diego Association of Governments (SANDAG), if it approves a resolution agreeing to participate in the self-certification process, and in consultation with the cities and county within its jurisdiction, its housing element advisory committee, and the department, shall work with a qualified consultant to determine the maximum number of housing units that can be constructed, acquired, rehabilitated, and preserved as defined in paragraph (11) of subdivision (e) of Section 33334.2 of the Health and Safety Code, and the maximum number of units or households that can be provided with rental or ownership assistance, by each jurisdiction during the third and fourth

housing element cycles to meet the existing and future housing needs for low- and very low income households as defined in Sections 50079.5, 50093, and 50105 of the Health and Safety Code, and extremely low income households. The methodology for determining the maximum number of housing units that can be provided shall include a recognition of financial resources and regulatory measures that local jurisdictions can use to provide additional affordable lower income housing. This process is intended to identify the available resources that can be used to determine the maximum number of housing units each jurisdiction can provide. The process acknowledges that the need to produce housing for low-, very low, and extremely low income households may exceed available resources. The department and SANDAG, with input from its housing element advisory committee, the consultant, and local jurisdictions, shall agree upon definitions for extremely low income households and their affordable housing costs, the methodology for the determination of the maximum number of housing units and the number each jurisdiction can produce at least one year before the due date of each housing element revision, pursuant to paragraph (4) of subdivision (e) of Section 65588. If SANDAG fails to approve a resolution agreeing to participate in this pilot program, or SANDAG and the department fail to agree upon the methodology by which the maximum number of housing units is determined, then local jurisdictions may not self-certify pursuant to this section.

(1) The ''housing element advisory committee'' should include representatives of the local jurisdictions, nonprofit affordable housing development corporations and affordable housing advocates, and representatives of the for-profit building, real estate and banking industries.

(2) The determination of the ''maximum number of housing units'' that the jurisdiction can provide assumes that the needs for low-, very low, and extremely low income households, including those with special housing needs, will be met in approximate proportion to their representation in the region's population.

(3) A ''qualified consultant'' for the purposes of this section means an expert in the identification of financial resources and regulatory measures for the provision of affordable housing for lower income households.

(b) A city or county within the jurisdiction of the San Diego Association of Governments that elects not to self-certify, or is ineligible to do so, shall submit its housing element or amendment to the department, pursuant to Section 65585.

(c) A city or county within the jurisdiction of the San Diego Association of Governments that elects to self-certify shall submit a self-certification of compliance to the department with its adopted

housing element or amendment. In order to be eligible to self-certify, the legislative body, after holding a public hearing, shall make findings, based on substantial evidence, that it has met the following criteria for self-certification:

(1) The jurisdiction's adopted housing element or amendment substantially complies with the provisions of this article, including addressing the needs of all income levels.

(2) For the third housing element revision, pursuant to Section 65588, the jurisdiction met its fair share of the regional housing needs for the second housing element revision cycle, as determined by the San Diego Association of Governments.

In determining whether a jurisdiction has met its fair share, the jurisdiction may count each additional lower income household provided with affordable housing costs. Affordable housing costs are defined in Section 6918 for renters, and in Section 6925 for purchasers, of Title 25 of the California Code of Regulations, and in Sections 50052.5 and 50053 of the Health and Safety Code, or by the applicable funding source or program.

(3) For subsequent housing element revisions, pursuant to Section 65588, the jurisdiction has provided the maximum number of housing units as determined pursuant to subdivision (a), within the previous planning period.

(A) The additional units provided at affordable housing costs as defined in paragraph (2) in satisfaction of a jurisdiction's maximum number of housing units shall be provided by one or more of the following means:

(i) New construction.

(ii) Acquisition.

(iii) Rehabilitation.

(iv) Rental or ownership assistance.

(v) Preservation of the availability to lower income households of affordable housing units in developments which are assisted, subsidized, or restricted by a public entity and which are threatened with imminent conversion to market rate housing.

(B) The additional affordable units shall be provided in approximate proportion to the needs defined in paragraph (2) of subdivision (a).

(4) The city or county provides a statement regarding how its adopted housing element or amendment addresses the dispersion of lower income housing within its jurisdiction, documenting that additional affordable housing opportunities will not be developed only in areas where concentrations of lower income households already exist, taking into account the availability of necessary public facilities and infrastructure.

(5) No local government actions or policies prevent the development of the identified sites pursuant to Section 65583, or accommodation of the jurisdiction's share of the total regional housing need, pursuant to Section 65584.

(d) When a city or county within the jurisdiction of the San Diego Association of Governments duly adopts a self-certification of compliance with its adopted housing element or amendment pursuant to subdivision (c), all of the following shall apply:

(1) Section 65585 shall not apply to the city or county.

(2) In any challenge of a local jurisdiction's self-certification, the court's review shall be limited to determining whether the self-certification is accurate and complete as to the criteria for self-certification. Where there has not been a successful challenge of the self-certification, there shall be a rebuttable presumption of the validity of the housing element or amendment.

(3) Within six months after the completion of the revision of all housing elements in the region, the council of governments, with input from the cities and county within its jurisdiction, the housing element advisory committee, and qualified consultant shall report to the Legislature on the use and results of the self-certification process by local governments within its jurisdiction. This report shall contain data for the last planning period regarding the total number of additional affordable housing units provided by income category, the total number of additional newly constructed housing units, and any other information deemed useful by SANDAG in the evaluation of the pilot program.

(e) This section shall become inoperative on June 30, 2010, and as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

CHAPTER 388

An act to repeal and add Section 17140.5 of the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 17140.5 of the Revenue and Taxation Code is repealed.

SEC. 2. Section 17140.5 is added to the Revenue and Taxation Code, to read:

17140.5. (a) Pursuant to Section 206 of the Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 526), the period of a servicemember's military service may not be included in computing any period limited by law, regulation, or order for the bringing of any action or proceeding under this part, Part 10.2 (commencing with Section 18401), or Part 11 (commencing with Section 23001), by or against the servicemember or the servicemember's heirs, executors, administrators, or assigns.

(b) Section 19521 is modified to provide that, pursuant to Section 207 of the Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 527), the maximum rate of interest on any underpayment incurred by a servicemember, or the servicemember and the servicemember's spouse jointly, before the servicemember enters military service may not bear interest at a rate in excess of 6 percent per year during the period of military service.

(c) Pursuant to Section 511 of the Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 571):

(1) A servicemember not domiciled in this state does not become a resident of this state by reason of being present in this state solely in compliance with military orders.

(2) Compensation for military service of a servicemember not domiciled in this state is not income for services performed or from sources within this state.

(3) The military compensation of a servicemember not domiciled in this state may not be used to increase the tax liability imposed on other income of that servicemember or that servicemember's spouse.

(4) A Native American servicemember whose legal residence or domicile is a federal Indian reservation shall be treated as living on the federal Indian reservation and the compensation of that servicemember for military service shall be deemed to be income derived wholly from federal Indian reservation sources.

(d) For purposes of this part and Part 10.2 (commencing with Section 18401), in the case of a servicemember not domiciled in this state, all of the following shall apply:

(1) Compensation for military service shall not be included in any of the following:

(A) Gross income of that servicemember or the spouse of that servicemember.

(B) ''Entire taxable income'' for purposes of computing the tax imposed under subdivision (b) or (d) of Section 17041.

(C) ''Alternative minimum taxable income'' for purposes of computing tax imposed under subparagraph (B) of paragraph (3) of subdivision (b) of Section 17062.

(2) Paragraph (2) of subdivision (h) of Section 17024.5 is modified to provide that 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 reduced by the amount of the compensation for military service for that taxable year of a servicemember not domiciled in this state.

(e) (1) ''Federal Indian reservation,'' ''servicemember,'' ''military service,'' ''period of military service,'' and ''compensation for military service'' shall have the same meanings as applicable for purposes of the Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 501 et seq.).

(2) ''Native American'' has the same meaning as the term ''Indian'' for purposes of applying Section 511(e) of the Servicemembers Civil Relief Act (50 U.S.C. Appen. Sec. 571(e)) for federal purposes.

(f) The amendments made to this section by the act adding this subdivision shall apply to any taxable year for which the period for making assessments or allowing a claim for refund or credit has not expired as of December 19, 2003.

SEC. 3. The Legislature declares that this act is necessary for the public purpose of making state law compatible with recently enacted federal law on December 19, 2003 (the Servicemembers Civil Relief Act (Public Law 108-189)), that specifically provides rules for servicemembers.

SEC. 4. This act provides for a tax levy within the meaning of Article IV of the Constitution and shall go into immediate effect.

CHAPTER 389

An act to add Section 14016.51 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 14016.51 is added to the Welfare and Institutions Code, to read:

14016.51. Upon the availability of federal funding, the department shall modify the Medi-Cal program mail-in application form, and other appropriate materials, and the single point-of-entry application form to allow applicants in counties served by managed care plans to contact the enrollment contractor by using the Health Care Options toll-free

telephone number to request and receive enrollment materials before a Medi-Cal eligibility determination has been made.

CHAPTER 390

An act relating to state property.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

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

(1) The Martini Creek Devil's Slide bypass right-of-way for the realignment of Route 1, from the northern boundary of the town of Montara to past the alignment summit over Montara Mountain, bisects the McNee Ranch Acquisition area of Montara State Beach, is an environmentally sensitive Coastal Mountain Habitat area of undeveloped land within a scenic corridor viewed from the coast and Route 1, and is popular for a variety of recreational pursuits, including hiking and biking.

(2) An overwhelming majority of San Mateo County voters passed Measure T in 1996, proclaiming that the construction of a surface bypass in this area would seriously damage the watersheds, wildlife habitats, and parks of Montara and San Pedro Mountains, and directing the amendment of their local coastal program to provide for a tunnel alternative to such a bypass.

(3) With the Department of Transportation's determination that a freeway bypass over Montara Mountain is not currently viable, the property located in the existing Martini Creek Devil's Slide bypass right-of-way for the realignment of Route 1 from the northern boundary of the town of Montara (State Parcel Number 39874) to past the alignment summit over Montara Mountain (State Parcel Number 39873 and a large portion of State Parcel Number 39872), hereinafter ''the Martini Creek Bypass Alignment,'' is surplus state property located within the coastal zone, as defined in Section 30103 of the Public Resources Code, as that zone was described on January 1, 1977, and subject to Section 9 of Article XIX of the California Constitution. It is, therefore, fitting and proper, and in furtherance of the public interest, that the Department of Transportation sell its ownership interest in the Martini Creek Bypass Alignment for the purpose of adding to the McNee Ranch Acquisition area of Montara State Beach.

(b) It is the intent of the Legislature that:

(1) The sale of the property in the Martini Creek Bypass Alignment by the Department of Transportation for conversion to state park purposes will not adversely impact any mitigation credits that may be additionally factored into the sale price and that the Department of Transportation may be entitled to by making this property transfer.

(2) The Department of Parks and Recreation shall include this area in the management of the McNee Ranch Acquisition area of Montara State Beach for park purposes that are consistent with the San Mateo County Local Coastal Program.

(c) The Department of Transportation shall declare that the Martini Creek Bypass Alignment right-of-way is surplus state property and provide for the sale and transfer of this property to the Department of Parks and Recreation for state park purposes as provided under Section 9 of Article XIX of the California Constitution.

CHAPTER 391

An act to amend Sections 21464 and 42001 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 21464 of the Vehicle Code is amended to read:

21464. (a) A person, without lawful authority, may not deface, injure, attach any material or substance to, knock down, or remove, nor may a person shoot at, any official traffic control device, traffic guidepost, traffic signpost, motorist callbox, or historical marker placed or erected as authorized or required by law, nor may a person without lawful authority deface, injure, attach any material or substance to, or remove, nor may a person shoot at, any inscription, shield, or insignia on any device, guide, or marker.

(b) A person may not use, and a vehicle, other than an authorized emergency vehicle or a public transit passenger vehicle, may not be equipped with, any device, including, but not limited to, a mobile infrared transmitter, that is capable of sending a signal that interrupts or changes the sequence patterns of an official traffic control signal unless that device or use is authorized by the Department of Transportation pursuant to Section 21350 or by local authorities pursuant to Section 21351.

(c) A person may not buy, possess, manufacture, install, sell, offer for sale, or otherwise distribute a device described in subdivision (b), including, but not limited to, a mobile infrared transmitter (MIRT), unless the purchase, possession, manufacture, installation, sale, offer for sale, or distribution is for the use of the device by a peace officer or other person authorized to operate an authorized emergency vehicle or a public transit passenger vehicle, in the scope of his or her duties.

(d) Any willful violation of subdivision (a), (b), or (c) that results in injury to, or the death of, a person is punishable by imprisonment in the state prison, or by imprisonment in a county jail for a period of not more than six months, and by a fine of not less than five thousand dollars ($5,000) nor more than ten thousand dollars ($10,000).

(e) Any willful violation of subdivision (a), (b), or (c) that does not result in injury to, or the death of, a person is punishable by a fine of not more than five thousand dollars ($5,000).

(f) The court shall allow the offender to perform community service designated by the court in lieu of all or part of any fine imposed under this section.

SEC. 2. Section 42001 of the Vehicle Code is amended to read:

42001. (a) Except as provided in subdivision (e) of Section 21464, or 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. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 4. This act shall become operative only if AB 340 of the 2003–04 Regular Session is chaptered.

CHAPTER 392

An act to amend Sections 2331, 2333, and 2333.5 of, the Streets and Highways Code, relating to highways.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 2331 of the Streets and Highways Code, as amended by Section 1 of Chapter 600 of the Statutes of 2001, is amended to read:

2331. (a) The Highway Safety Act of 1973 (23 U.S.C. Sec. 401 et seq.) has authorized appropriations for a number of programs relating to projects for the improvement of highway safety and the reduction of traffic congestion. These programs consist of the rail-highway crossings program (Section 203 of the Highway Safety Act of 1973), the pavement marking demonstration program (23 U.S.C. Sec. 151), projects for high-hazard locations, including, but not limited to, projects for bicycle and pedestrian safety and traffic calming measures in those locations (23 U.S.C. Sec. 152), program for the elimination of roadside obstacles (23 U.S.C. Sec. 153), and the federal-aid safer roads demonstration program (23 U.S.C. Sec. 405). The purpose of this chapter is to implement these programs in this state. The commission, the department, boards of supervisors, and city councils are authorized to do all things necessary in their respective jurisdictions to secure and expend federal funds in accordance with the intent of that federal act and this chapter, and to coordinate with local law enforcement agencies' community policing efforts.

(b) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 2. Section 2331 of the Streets and Highways Code, as added by Section 3 of Chapter 600 of the Statutes of 2001, is amended to read:

2331. (a) The Highway Safety Act of 1973 (21 U.S.C. Sec. 401 et seq.) has authorized appropriations for a number of programs relating to projects for the improvement of highway safety and the reduction of traffic congestion. These programs consist of the rail-highway crossings program (Section 203 of the Highway Safety Act of 1973), the pavement marking demonstration program (23 U.S.C. Sec. 151), projects for high-hazard locations (23 U.S.C. Sec. 152), program for the elimination of roadside obstacles (23 U.S.C. Sec. 153), and the federal-aid safer roads demonstration program (23 U.S.C. Sec. 405). The purpose of this chapter is to implement these programs in this state. The commission, the department, boards of supervisors, and city councils are authorized to do all things necessary in their respective jurisdictions to secure and expend those federal funds in accordance with the intent of the federal act and of this chapter.

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

SEC. 3. Section 2333 of the Streets and Highways Code, as amended by Section 4 of Chapter 600 of the Statutes of 2001, is amended to read:

2333. (a) In each annual proposed budget prepared pursuant to Section 165, there shall be included an amount equal to the estimated apportionment available from the federal government for the programs described in Sections 2331 and 2333.5. The commission may allocate a portion of those funds each year for use on city streets and county roads. For projects authorized under Section 2333.5 and receiving funding under this section, the department may substitute State Highway Account funds in accordance with the department's policy for state funding in place at the time of the project fund allocation, if those federal funds are directed to projects on state highways that are eligible for funding under Section 152 of Title 23 of the United States Code. It is the intent of the Legislature that the commission allocate the total amount received from the federal government for all of the programs described in Sections 2331 and 2333.5 in a manner that, over a period of five years, makes not less than one million dollars ($1,000,000) of those funds available for use pursuant to Section 2333.5 and the remaining funds available for use in approximately equal amounts on state highways, local roads, and the program established under Section 2333.5. In addition, it is the intent of the Legislature that the commission shall apportion for use, in financing the railroad grade separation program described in Section 190, a substantial portion of the funds received pursuant to the federal rail-highway crossings program. Notwithstanding any other provision of law, the share of any railroad of the cost of maintaining railroad crossing protection facilities funded, in whole or in part, by funds described in Section 2331 shall be the same share it would be if no federal funds were involved and the crossing protection facilities were funded pursuant to an order of the Public Utilities Commission pursuant to Section 1202 of the Public Utilities Code; and in case of dispute, the Public Utilities Commission shall determine that share pursuant to this section.

(b) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 4. Section 2333 of the Streets and Highways Code, as added by Section 6 of Chapter 600 of the Statutes of 2001, is amended to read:

2333. (a) In each annual proposed budget prepared pursuant to Section 165, there shall be included an amount equal to the estimated apportionment available from the federal government for the programs described in Section 2331. The commission may allocate a portion of such funds each year for use on city streets and county roads. It is the intent of the Legislature that the commission allocate the total amount

received from the federal government for all of the programs described in Section 2331 in such a manner that, over a period of five years, such funds are made available for use in approximately equal amounts on state highways and on local roads. In addition, it is the intent of the Legislature that the commission shall apportion for use, in financing the railroad grade separation program described in Section 190, a substantial portion of the funds received pursuant to the federal rail-highway crossings program. Notwithstanding any other provision of law, the share of any railroad of the cost of maintaining railroad crossing protection facilities funded, in whole or in part, by funds described in Section 2331 shall be the same share it would be if no federal funds were involved and the crossing protection facilities were funded pursuant to an order of the Public Utilities Commission pursuant to Section 1202 of the Public Utilities Code, and in case of dispute, the Public Utilities Commission shall determine such share pursuant to this section.

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

SEC. 5. Section 2333.5 of the Streets and Highways Code is amended to read:

2333.5. (a) The department, in consultation with the Department of the California Highway Patrol, shall establish and administer a ''Safe Routes to School'' construction program pursuant to the authority granted under Section 152 of Title 23 of the United States Code and shall use federal transportation funds for construction of bicycle and pedestrian safety and traffic calming projects.

(b) The department shall make grants available to local governmental agencies under the program based on the results of a statewide competition that requires submission of proposals for funding and rates those proposals on all of the following factors:

(1) Demonstrated needs of the applicant.

(2) Potential of the proposal for reducing child injuries and fatalities.

(3) Potential of the proposal for encouraging increased walking and bicycling among students.

(4) Identification of safety hazards.

(5) Identification of current and potential walking and bicycling routes to school.

(6) Consultation and support for projects by school-based associations, local traffic engineers, local elected officials, law enforcement agencies, school officials, and other relevant community stakeholders.

(c) With respect to the use of funds provided in subdivision (a), prior to the award of any construction grant or the department's use of those funds for a ''Safe Routes to School'' construction project encompassing a freeway, state highway or county road, the department shall consult with, and obtain approval from, the Department of the California

Highway Patrol, ensuring that the ''Safe Routes to School'' proposal compliments the California Highway Patrol's Pedestrian Corridor Safety Program and is consistent with its statewide pedestrian safety statistical analysis.

(d) The department shall continue to study the effectiveness of the program established under this section, and shall submit, on or before March 1, 2007, a report of its findings to the Legislature. The report shall include, but need not be limited to, the following elements:

(1) An evaluation of the program's impact on accident, injury, and fatality rates involving pedestrians or bicycles in the vicinity of the projects. As a subset, this element shall specifically address impacts on rates of fatalities and injuries to children.

(2) An evaluation of the program's impact on rates of bicycling and walking as modes of transportation to or from schools located in the vicinity of the projects.

(3) An evaluation of the potential safety effects of spending the program funds on other state and local safety programs, including a comparison of the relative safety effects of spending the available funds on the ''Safe Routes to School'' construction program or on the state and local highway safety programs and, to the extent possible within that comparison, the impacts on rates of fatalities and injuries to children.

(e) The department is encouraged to coordinate with local law enforcement agencies' community policing efforts in establishing and maintaining the ''Safe Routes to School'' construction program.

(f) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

CHAPTER 393

An act to amend Section 5074 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 5074 of the Vehicle Code is amended to read:

5074. (a) This section shall be known and may be cited as the Polanco-Bates License Plates for the Arts Act of 1993. The California Arts Council shall participate in the special interest license plate program.

(b) In addition to the regular fees for an original registration or renewal of registration, the following additional fees shall be paid for the issuance, transfer, or renewal of license plates bearing, notwithstanding Section 5060, a full-plate graphic design, depicting a significant feature or quality of the State of California, approved by the department in consultation with the California Arts Council:

(1) For the original issuance of the plates, fifty dollars ($50).

(2) For a renewal of registration of the plates, forty dollars ($40).

(3) For the transfer of the special plates to another vehicle, fifteen dollars ($15).

(4) In addition, for the issuance of an environmental license plate, as defined in Section 5103, with a full-plate graphic design, the additional fees prescribed in Sections 5106 and 5108. The additional fees prescribed in Sections 5106 and 5108 shall be deposited in the Environmental License Plate Fund.

(c) Except as provided in paragraph (4) of subdivision (b), all fees collected under this section, after deduction of the department's costs in administering this section, shall be deposited in the Graphic Design License Plate Account, which is hereby established in the General Fund. The funds in the account shall be used by the California Arts Council, upon appropriation by the Legislature, for arts education and local arts programming.

(d) The California Arts Council shall use the revenue derived from the fee increases authorized by amendment of this section during the 2003–04 Regular Session exclusively for arts education and local arts programming. The council shall not use that revenue for its administrative costs.

CHAPTER 394

An act to add Section 14107.13 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 14107.13 is added to the Welfare and Institutions Code, to read:

14107.13. (a) (1) The department, in conjunction with the Department of Justice, shall identify those areas of the fee-for-service Medi-Cal program that are at greatest risk of fraud or abuse.

(2) In an effort to curb the fraud and abuse, the department shall do one or both of the following:

(A) Request confirmation of service from beneficiaries that services or goods were actually received.

(B) Request confirmation of service from referring and rendering providers that the referring providers actually authorized and the rendering providers actually delivered services or goods underlying claims for reimbursement.

(3) For purposes of this section, ''areas'' includes, but is not limited to, provider types, services, aid code categories, and geographic areas.

(b) For any fee-for-service benefit, the department shall provide a notice to confirm service to the following:

(1) The recipient of the benefits.

(A) Notices under this paragraph shall be provided no more frequently than once per calendar month and shall detail all benefits reportedly received that are relevant to the suspected fraudulent or abusive activity identified in paragraph (1) of subdivision (a).

(B) Notwithstanding subparagraph (A), a notice shall not be provided to a beneficiary who has not received benefits that are relevant to the suspected fraudulent or abusive activity identified in paragraph (1) of subdivision (a).

(2) The referring and rendering providers of benefits.

(A) Notices under this paragraph shall be provided no more frequently than one per calendar month and shall detail all referrals for benefits and all benefits rendered that are relevant to the suspected fraudulent or abusive activity identified in paragraph (1) of subdivision (a).

(B) Notwithstanding subparagraph (A), a notice shall not be sent to a provider who has made no referrals for benefits nor rendered benefits that are relevant to the suspected fraudulent or abusive activity identified in paragraph (1) of subdivision (a).

(C) Notwithstanding subparagraph (A), a notice shall not be sent to a provider who receives a remittance advice from the state.

(D) Subject to subdivision (e), notices under this paragraph shall be sent to the provider's mailing address, facsimile number, or electronic mail address, of record with the appropriate licensing agency.

(c) The notices required by this section shall be sent for as long as the department, in conjunction with the Department of Justice, deems it necessary for fraud control purposes.

(d) The notices required by this section shall be adopted jointly by the department and the Department of Justice.

(e) The notices required by this section shall be transmitted electronically, via facsimile, or by mail, whichever is most

cost-effective, practicable, and consistent with state and federal privacy laws and regulations.

(f) Notices sent to beneficiaries pursuant to paragraph (1) of subdivision (b) shall comply with the Medi-Cal threshold language requirements that apply to Medi-Cal managed care plans.

CHAPTER 395

An act to add Section 14107.12 to the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 14107.12 is added to the Welfare and Institutions Code, to read:

14107.12. (a) The Department of Justice may pay, pursuant to subdivision (d), from funds recovered by the Department of Justice, and only to the extent that the money may be used for this purpose, a reward to any person who furnishes information leading to the recovery of not less than one hundred dollars ($100) of public funds paid for services or goods rendered under the Medi-Cal program due to an act or omission by a individual or entity from which recovery is sought and that is the basis of a conviction of a Medi-Cal provider of services or goods in violation of any statutory criminal prohibition within the jurisdiction of the Bureau of Medi-Cal Fraud and Elder Abuse pursuant to Section 12528 of the Government Code.

(b) No reward shall be paid for information under this section unless the information relates to the specific activities of a specific individual or entity, and specifies the time period during which the prohibited activities occurred.

(c) No reward shall be paid under this section to a federal, state, or local public employee or any individual contracting with a state or local agency for information discovered by the employee during the course of his or her duties as a federal, state, or local agency employee or pursuant to a contract with that agency.

(d) The amount of a reward under this section shall be determined by the Department of Justice, and shall not exceed 10 percent of the restitution recovered or one thousand dollars ($1,000), whichever is less. No reward shall be paid until all recoverable funds have been collected

from the individual or entity convicted of a violation of statutory prohibitions listed in subdivision (a).

(e) A determination by the Department of Justice of the eligibility of an individual to receive a reward, the amount and appropriateness of a reward under this section, and the timing of the payment of the reward shall be deemed to be final and shall not be subject to administrative appeal or judicial review.

(f) Subject to subdivision (g), payments made under authority of this section shall be disregarded for purposes of determining eligibility for any Medi-Cal program, for the CalWORKs program, for the Food Stamp Program, for the County Medical Services Program, and for any other means-tested public benefit program for which California has authority to establish the rules for determining eligibility.

(g) The income disregard described in subdivision (f) shall not be effective, with respect to an identified program, until the first day of the third month from the month in which any necessary federal approval is obtained. The income disregard provided for in subdivision (f) shall only be implemented to the extent that federal financial participation is obtained.

CHAPTER 396

An act to amend Section 464 of the Streets and Highways Code, relating to transportation.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 464 of the Streets and Highways Code is amended to read:

464. (a) Route 164 is Rosemead Boulevard from:

(1) Gallatin Road near Pico Rivera to the northern city limit of Temple City in the vicinity of Callita Street and Sultana Avenue.

(2) The northern city limit of Temple City in the vicinity of Callita Street and Sultana Avenue to the southern city limit of the City of Pasadena.

(b) (1) Notwithstanding subdivision (a), the commission may relinquish to the County of Los Angeles that portion of Route 164 described in paragraph (2) of subdivision (a), pursuant to the terms of a cooperative agreement between the county and the department, upon a

determination by the commission that the relinquishment is in the best interests of the state.

(2) A relinquishment under this subdivision shall become effective immediately following the recordation by the county recorder of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, both of the following shall apply:

(A) The portion of Route 164 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 164 relinquished under this subdivision may not be considered for future adoption under Section 81.

(4) For the portion of Route 164 that is relinquished under this subdivision, the County of Los Angeles shall maintain within its jurisdiction signs directing motorists to the continuation of Route 164.

CHAPTER 397

An act to add Chapter 5.5 (commencing with Section 60660) to Part 33 of the Education Code, relating to education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

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

(a) The purpose of the public school accountability system is to improve the learning and academic achievement of all California public school pupils.

(b) The Standardized Testing and Reporting (STAR) achievement test and the California Standards Tests provide a wealth of data about individual pupil achievement in different academic content clusters. Currently, this assessment data does not sufficiently reach most principals and teachers so they can efficiently utilize it in recognizing the level of achievement of each pupil and designing a program that is best tailored to meet the needs and improve the achievement of each pupil.

(c) This information can and should be disaggregated to provide teachers and principals all relevant data regarding individual pupil learning and achievement so they make better decisions and design more individualized learning and instructional programs for each pupil.

(d) Many public school pupils transfer schools each school year, making it difficult for principals and teachers to obtain and utilize the available data regarding the status and level of academic preparedness of each incoming pupil.

(e) The use of data to inform and to determine decisionmaking is revolutionizing public and private entities worldwide by putting formerly centralized information at the fingertips of educators so they can make informed decisions with regard to improving the academic achievement of their pupils.

(f) Many schools need assistance to utilize information technology to craft appropriate programs that strive to improve the learning and achievement of their pupils.

(g) Easy-to-use electronic learning assessment resources are now available to provide educators with increased capacity to determine the achievement status of their pupils and to better design programs tailored toward their improvement.

(h) Putting easy-to-use electronic learning assessment resources in the hands of principals and teachers would allow them to monitor pupil academic achievement over time and use that data to effectively design instructional strategies to improve pupil performance.

(i) The federal No Child Left Behind Act of 2001 mandates that all programs and interventions be quantitatively evaluated using reliable pupil data and that technology be used whenever possible to collect, analyze, and report findings. The burden of this mandate may be partially relieved by the use of electronic learning assessment resources to save time and money.

SEC. 2. Chapter 5.5 (commencing with Section 60660) is added to Part 33 of the Education Code, to read:

CHAPTER 5.5. REVIEW OF ELECTRONIC RESOURCES CAPABLE OF ANALYZING PUPIL ASSESSMENT DATA

60660. The Superintendent of Public Instruction shall require the California Learning Resource Network to establish, by December 31, 2004, review criteria and a review process for the identification and review of electronic learning assessment resources.

60661. (a) The review performed by the California Learning Resource Network shall identify new and existing electronic learning assessment resources capable of assisting schools and school districts to analyze assessment information for the purpose of designing instructional plans to improve pupil achievement and shall include a descriptive model for use by administrators and teachers that differentiates and compares the capabilities of the different types of identified electronic learning assessment resources.

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

(1) The ability to report the results of the statewide pupil assessment programs in aggregate and disaggregate forms for analysis by administrators and teachers to plan for improved pupil achievement.

(2) The ability to quickly identify achievement gaps.

(3) The ability to link results of assessment to instructional strategies that are aligned to state adopted content standards and the curriculum frameworks.

(4) The extent to which information can be tailored to individual pupil level, classroom level, school level, school district level, and state level data.

(5) The ability to reduce the overhead and additional cost of assisting teachers and school administrators to plan and align instruction to address academic deficiencies identified by both standardized and criterion referenced academic assessments.

(c) In performing its review, the California Learning Resource Network may not make subjective evaluations of the electronic learning assessment resources under review and shall limit its review to the factual capabilities of those resources.

(d) The existing external evaluation of the California Learning Resource Network will determine the overall cost and benefits of providing statewide assessment information resources as described in this chapter and the extent to which school administrators and teachers access and use the information provided to accomplish all of the following:

(1) Make use of state assessment information to inform instructional planning.

(2) Link instruction to the state-adopted content standards.

(3) Save time and financial resources related to instructional planning.

(4) Target instruction to the academic needs of pupils.

(e) The Superintendent of Public Instruction shall provide a written report of the results of the external evaluation of the ongoing review process to the Director of Finance, the Legislative Analyst, the State Board of Education, and the appropriate policy and fiscal committees of the Legislature by January 1, 2006.

60662. In its review of electronic learning assessment resources, the California Learning Resource Network shall explore the feasibility of creating, implementing, and maintaining an online customer feedback system that would allow purchasers of electronic learning assessment resources identified and reviewed to document the extent to which these electronic learning assessment resources contribute to improved instructional planning.

60663. The Superintendent of Public Instruction shall direct the California Learning Resource Network to implement the provisions of this chapter by prioritizing the use of existing budgeted resources available to the network.

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

In order to provide school districts, at the earliest possible time, with access to information on electronic learning assessment resources that will assist them in monitoring pupil achievement, designing instructional strategies to improve pupil performance, and meeting the reporting requirements of the federal No Child Left Behind Act, it is necessary that this act take effect immediately.

CHAPTER 398

An act to amend Section 21224 of the Government Code, relating to public employees' retirement.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. The Legislature finds and declares as follows:

(a) Existing provisions of the Public Employees' Retirement Law authorize retired members of the Public Employees' Retirement System to return to work for limited appointments, of up to 960 hours in a calendar year, with one or more state agencies or other employers under the system, without reinstatement from retirement or loss or interruption of benefits.

(b) This provision of existing law provides state agencies and other public employers with the ability to utilize the unique skills of those retired members and to address emergency workflow situations for a limited time. This provision also provides an advantage to retired members in that a retired member may return to work, receive compensation for that work, and continue to receive his or her retirement allowance.

(c) Administration of this program has, in the past, been subject to abuse. Among these abuses has been the practice, by certain retired members, of collecting unemployment insurance compensation after the retired member has worked 960 hours in a calendar year. As a result, in

a given year, a retired member of the system may collect three public stipends: a retirement allowance, a salary for up to 960 hours of work in a calendar year, and unemployment insurance compensation after that 960-hour limit has been reached. The Legislature believes that this ''triple dipping'' process is inappropriate and a violation of the public trust.

(d) It is the intent of the Legislature that managers of state agencies and departments and other public employers shall be responsible for this abuse by retired members of the system. Appointing powers of state agencies and other employers under the Public Employees' Retirement System, whose retired appointees have abused the system, should not be permitted to appoint any retired members in the immediate term.

SEC. 2. Section 21224 of the Government Code is amended to read:

21224. (a) A retired person may serve without reinstatement from retirement or loss or interruption of benefits provided by this system upon appointment by the appointing power of a state agency or any other employer either during an emergency to prevent stoppage of public business or because the retired employee has skills needed in performing work of limited duration. These appointments shall not exceed a total for all employers of 960 hours in any calendar year, and the rate of pay for the employment shall not be less than the minimum, nor exceed that paid by the employer to other employees ma performing comparable duties.

(b) (1) This section shall not apply to any retired person otherwise eligible if during the 12-month period prior to an appointment described in this section the retired person received any unemployment insurance compensation arising out of prior employment subject to this section with the same employer.

(2) A retired person who accepts an appointment after receiving unemployment insurance compensation as described in this subdivision shall terminate that employment on the last day of the current pay period and shall not be eligible for reappointment subject to this section for a period of 12 months following the last day of employment. The retired person shall not be subject to Section 21202 or subdivision (b) of Section 21220.

CHAPTER 399

An act to amend Section 339 of the Streets and Highways Code, relating to highways.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. 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.

(d) (1) Notwithstanding subdivision (c), the commission may relinquish to the City of West Covina any portion of Route 39 that is located within the city limits of West Covina, pursuant to the terms of a cooperative agreement between the city and the department, upon a determination by the commission that the relinquishment is in the best interests of the state.

(2) A relinquishment under this subdivision shall become effective immediately following the recordation by the county recorder of the relinquishment resolution containing the commission's approval of the terms and conditions of the relinquishment.

(3) On and after the effective date of the relinquishment, both of the following shall apply:

(A) The portion of Route 39 relinquished under this subdivision shall cease to be a state highway.

(B) The portion of Route 39 relinquished under this subdivision may not be considered for future adoption under Section 81.

(4) For the portion of Route 39 relinquished under this subdivision, the City of West Covina shall maintain within its jurisdiction signs directing motorists to the continuation of Route 39.

CHAPTER 400

An act to amend the heading of Article 8.7 (commencing with Section 6047.60) of Chapter 9 of Part 1 of Division 4 of, and to amend Sections

6047.60, 6047.61, 6047.62, 6047.63, 6047.64, 6047.68, 6047.69, 6047.70, 6047.74, 6047.76, 6047.78, 6047.79, 6047.80, 6047.82, 6047.87, 6047.88, 6047.89, 6047.92, 6047.94, 6047.96, 6047.97, 6047.101, 6047.105, 6047.109, 6047.112, 6047.113, 6047.118, and 6047.124 of, and to repeal Sections 6047.77 and 6047.93 of, the Food and Agricultural Code, relating to pest control, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. The heading of Article 8.7 (commencing with Section 6047.60) of Chapter 9 of Part 1 of Division 4 of the Food and Agricultural Code is amended to read:

Article 8.7. Table Grape Pest and Disease District

SEC. 1.5. Section 6047.60 of the Food and Agricultural Code is amended to read:

6047.60. The Legislature hereby finds and declares the following:

(a) California is the leading producer of table grapes in the United States, accounting for 97 percent of table grapes grown in this country.

(b) Table grapes are grown in 15 counties located throughout the state.

(c) California grows more than 170,000 acres of table grapes producing over 700,000 tons of table grapes per year, valued at more than eight hundred sixty million dollars ($860,000,000) with a direct and indirect impact on the state's economy that totals more than four billion dollars ($4,000,000,000).

(d) The plant killing bacterium, Xylella fastidiosa, and the resulting plant disease known as Pierce's disease, and its vectors, present a clear and present danger to California's nearly three billion dollar ($3,000,000,000) grape industry, as well as to many other commodities and plant life.

(e) Pierce's disease and its vector the glassy-winged sharpshooter have spread into the southern San Joaquin Valley, which, if left unabated, places grapes and other commodities throughout California in immediate peril.

(f) In addition to the research funds and program provisions set forth in Article 8 (commencing with Section 6045) of Chapter 9 of Part 1 of Division 4, dealing with wine grapes, the table grape industry is at substantial risk for Pierce's disease and other pests and recognizes the need for additional specific control programs.

(g) Additional programs may include field treatments similar to, or the expansion of, the successful United States Department of Agriculture and California Department of Food and Agriculture General Beale area pilot program in Kern County. The expansion of those programs may require industry assessments from the table grape industry through the creation of a pest abatement district.

(h) The state has an interest in protecting its agricultural products from further destruction by the glassy-winged sharpshooter and Pierce's disease, and other designated pests and diseases.

(i) As a known vector for Pierce's disease, the glassy-winged sharpshooter has been determined to carry and spread Pierce's disease to many forms of California agriculture, usually with complete destruction to the infected crop. This destructive effect of the disease has been determined by experts in the viticulture field to be especially true with respect to infected table grapes. To avoid a potentially catastrophic loss to one of California's most important industries, the Legislature declares that this article is in the interest of the public health and welfare.

(j) This article shall not establish a precedent for, or supercede, reduce, or in any way alter, government funding from any source related to Pierce's disease and other designated pests and diseases in this state.

(k) The Legislature further declares that it is in the interest of the public health and welfare that the districts authorized to be created by this article not duplicate existing services already being provided by the University of California, state, counties, or the county agricultural commissioners to eradicate the glassy-winged sharpshooter and Pierce's disease, and other designated pests and diseases.

SEC. 2. Section 6047.61 of the Food and Agricultural Code is amended to read:

6047.61. This article shall be known and may be cited as the Table Grape Pest and Disease District Law.

SEC. 2.5. Section 6047.62 of the Food and Agricultural Code is amended to read:

6047.62. (a) It is the purpose of this article to make available a procedure for the organization, operation, and dissolution of districts to respond to the effects of the spread of the glassy-winged sharpshooter and Pierce's disease, and other designated pests and diseases that attack table grape plants, and to collect and disseminate to table grape producers in the district all relevant information and scientific studies concerning the pest or pests, as well as to chart and determine the extent and location of any infestations.

(b) Division 3 (commencing with Section 56000) of Title 5 of the Government Code does not apply to districts organized pursuant to this article.

SEC. 3. Section 6047.63 of the Food and Agricultural Code is amended to read:

6047.63. Unless the context otherwise requires, the definitions in this section govern the construction of this article.

(a) ''Board'' or ''board of directors'' means the board of directors of a district.

(b) ''District'' means a table grape pest district organized pursuant to this article.

(c) ''Owner'' includes joint owner, coowner, guardian, executor, administrator, or any other person that holds property in a trust capacity under court appointment.

(d) ''Pierce's disease'' is the disease of grapevines caused by the bacterium Xylella fastidiosa.

(e) ''Table grapes'' means all table grape varieties specified in the report issued pursuant to Section 55601.5. ''Table grapes'' also means all raisin varieties specified in the report issued pursuant to Section 55601.5 that are intended to be marketed in their fresh form.

(f) ''Table grape acreage'' means any parcel of real property with more than one acre of table grape plants.

(g) ''Grower'' or ''producer'' means any person who is engaged within this state in the business of producing, or causing to be produced, table grapes for market.

(h) ''Other designated pests and diseases'' means pests and diseases designated by the district as serious pests and diseases warranting district action.

SEC. 4. Section 6047.64 of the Food and Agricultural Code is amended to read:

6047.64. (a) Proceedings for the formation of a district within any county shall be commenced by a petition signed by the owners of 15 percent of the table grape acreage.

(b) The petition shall be addressed to, and filed with, the board of supervisors of the county.

SEC. 5. Section 6047.68 of the Food and Agricultural Code is amended to read:

6047.68. (a) The petition shall be accompanied by a fee in an amount established by the board of supervisors as is necessary to reimburse the county for all costs incurred by it in connection with the proposed organization of the district and subsequent election. The board of supervisors may charge the district for actual expenses incurred by the county in connection with the proceedings for the formation of the district.

(b) Upon the establishment of the district, the district shall reimburse those who provided the funds specified in subdivision (a) from assessments collected pursuant to this article.

SEC. 6. Section 6047.69 of the Food and Agricultural Code is amended to read:

6047.69. (a) Upon the presentation and filing of a petition, the board of supervisors shall refer the petition to the county agricultural commissioner for the preparation of a register of owners of table grape acreage within the proposed district, and for an investigation and report.

(b) The county agricultural commissioner shall create a register of all table grape acreage owners within the proposed district and specifically describe the net acreage of land devoted to the growing of table grapes by each owner. The county agricultural commissioner shall file with the register of table grape acreage owners a report to the board of supervisors describing the present condition of the glassy-winged sharpshooter and Pierce's disease infestations, or infestation of other designated pests and diseases, and any proposed program that may warrant the board of supervisors proceeding with the organization of the district and recommendation as to the advisability of creating the district.

SEC. 7. Section 6047.70 of the Food and Agricultural Code is amended to read:

6047.70. (a) The board of supervisors shall fix a time and place for a hearing of the petition.

(b) The hearing shall not be less than 20 days, or more than 40 days, after the filing of the petition with the board of supervisors.

(c) The board of supervisors shall order the clerk of the board of supervisors to give notice of the hearing that will do the following:

(1) State the time and place for the hearing that was fixed by the board of supervisors.

(2) State that at the hearing protests will be considered by the board of supervisors.

(3) State that requests in writing for the exclusion of acreage from, or the inclusion of acreage in, the proposed district, will be heard and considered by the board of supervisors.

(4) State that the petition is available for inspection at the office of the clerk of the board of supervisors.

(5) Designate the boundaries of the proposed district in substantially the same way that they are described in the petition.

SEC. 8. Section 6047.74 of the Food and Agricultural Code is amended to read:

6047.74. At the hearing, any owner of table grape acreage in the proposed district may present to the board of supervisors a request, in writing, for the exclusion of that acreage or any part of that acreage from the proposed district upon a showing that the acreage or part of that acreage will not be benefited by the activities of the proposed district. However, if the excluded acreage is planted with table grapes, the owner of the acreage shall inform the district, in writing, within 30 days of

planting. Factors that the board of supervisors may consider in its determination for exclusion, as set forth in an affidavit from the owner of the acreage, shall include the following:

(a) That the acreage is not planted to table grapes and will not be so planted in the foreseeable future, as evidenced by an affidavit from the owner of the acreage so stating.

(b) That the table grape plants have been removed from the acreage and that no living table grape plants remain on the acreage.

(c) That exclusion of the acreage, or any part of the acreage, from the district will not present a risk of glassy-winged sharpshooter infestation or infestation by other designated pests or diseases because of the acreage's distance or isolation from infested geographical regions.

SEC. 9. Section 6047.76 of the Food and Agricultural Code is amended to read:

6047.76. (a) If the board of supervisors determines that the project is feasible and in the interest of the table grape acreage owners of the county, the board of supervisors shall, by order entered in its minutes, declare the district is duly organized under the name designated in the petition for the formation of the district.

(b) The order shall describe the territory included in the district and, if the board of supervisors does not exclude or include acreage pursuant to Section 6047.78, it is a sufficient description of the territory to describe the boundaries in substantially the same way as they are described in the petition.

(c) A copy of the order certified by the clerk of the board of supervisors shall be filed with the county recorder of the county in which the district is situated.

SEC. 9.5. Section 6047.77 of the Food and Agricultural Code is repealed.

SEC. 10. Section 6047.78 of the Food and Agricultural Code is amended to read:

6047.78. (a) In determining the boundaries of the district, the board of supervisors shall exclude from the district any table grape acreage that it finds will not be benefited by the proposed project, pursuant to the facts in Section 6047.74, and it may include in the district any acreage that it finds will be benefited if it also finds it will be in the interest of the district to include this acreage. The inclusion may be upon application of the owner or, without the owner's application, upon giving the owner notice of the proposed inclusion and an opportunity for a hearing on the inclusion.

(b) Notice of inclusion shall be mailed, postage prepaid, by the clerk of the board of supervisors, to the address of the owner of the acreage as shown by the last equalized county assessment roll, and to any person that has filed with the clerk that person's name and address and

description of acreage in which he or she has either a legal or equitable interest. The notice shall describe the acreage proposed to be included, and shall state the time and place at which objections to the inclusion will be heard.

(c) Any owner of table grape acreage outside of the proposed district may present to the board of supervisors a request in writing for inclusion of the acreage in the proposed district.

SEC. 11. Section 6047.79 of the Food and Agricultural Code is amended to read:

6047.79. Upon the filing of the order of organization, the board of supervisors shall appoint a board of directors of five members to administer the affairs of the district.

SEC. 12. Section 6047.80 of the Food and Agricultural Code is amended to read:

6047.80. To be a director of the district, a person shall be either an owner of, or the designee of an owner of, acreage included in the district that is devoted, in whole or in part, to the growing of table grapes.

SEC. 13. Section 6047.82 of the Food and Agricultural Code is amended to read:

6047.82. (a) From and after the filing for record of the order of the board of supervisors declaring the district organized, and the appointment and qualification of its first board of directors, the organization of the district is complete. The district shall operate for a period of five years from the date of its organization, and shall cease to exist after five years unless the district is reauthorized by the board of supervisors.

(b) The board of directors shall hold a public hearing six months prior to termination of its initial organization or last reauthorization to determine whether the conditions of the glassy-winged sharpshooter or Pierce's disease or other designated pests and diseases warrant the reauthorization of the district for an additional five years.

(c) The notice of hearing shall state the name of the district and that consideration is being given to reauthorizing the district for an additional five years, the boundaries of the district, and the time and place for the hearing. Notice of the hearing shall be given as provided in Sections 6047.71 and 6047.72. The board of directors shall submit the record of the hearing and its recommendation to the board of supervisors within 90 days of the hearing. The board of supervisors shall approve or reject the recommendation. If it rejects the recommendation, the board of supervisors shall return the report accompanied by its reasons for the rejection to the board of directors within 30 days of receipt. The board of directors may thereafter address the reasons for rejection by the board of supervisors and submit an amended report and new recommendations

for reauthorization for approval or rejection by the board of supervisors, unless the district has ceased to exist pursuant to subdivision (a).

(d) If the board of supervisors approves the continuation of the district, the board of supervisors shall, by an order entered in its minutes, declare the district duly extended.

SEC. 14. Section 6047.87 of the Food and Agricultural Code is amended to read:

6047.87. (a) The district may do all of the following:

(1) Sue and be sued in all actions and proceedings in all courts and tribunals of competent jurisdiction.

(2) Adopt a seal and alter it at pleasure.

(3) Accept contributions, and by grant, purchase, gift, devise, lease, or otherwise, and hold, use and enjoy, and lease, or otherwise dispose of, real and personal property of every kind and description within or without the district necessary to the full and convenient exercise of its powers.

(4) Recommend an assessment to the board of supervisors to be levied on the owners of acreage of table grapes being grown in the district to pay obligations of the district incurred to accomplish the purposes of the district as provided in this article, which may involve funding all or a portion of a Pierce's disease or glassy-winged sharpshooter program, or program involving other designated pests and diseases.

(5) Make contracts, and employ, except as otherwise provided in this article, all persons, firms, and corporations necessary to carry out the purposes and the powers of the district, and at any salary, wage, or other compensation as the board of directors shall determine.

(6) Respond to the effects of, the spread of glassy-winged sharpshooter and Pierce's disease, and other designated pests and diseases, and collect and disseminate to table grape growers and the owners of table grapes acreage in the district relevant information and scientific studies concerning these pests or diseases, as well as to chart and determine the extent and location of any infestations.

(7) Take all actions necessary to control, eradicate, remove, or prevent the spread of the glassy-winged sharpshooter or Pierce's disease, or other designated pests and diseases injurious to table grapes.

(8) With reasonable advance notice in writing to the landowner, as determined by the district, enter into or upon any land included within the boundaries of the district for the purpose of inspecting the grape plants and any other host plants and fruit growing on these lands.

(9) Eradicate, eliminate, remove, or destroy any table grape plants having evidence of Pierce's disease or other designated pests and diseases.

(10) Coordinate with the county agricultural commissioner as to his or her taking appropriate actions to have any table grape plants growing

within the district infested with Pierce's disease or other designated pests and diseases adjudged a public nuisance, and decreed that the nuisance be abated.

(11) Coordinate district activities with other table grape pest and disease districts established pursuant to this article and Section 6047.3.

(12) Perform any and all acts, either within or outside the district, necessary or proper to fully and completely carry out the purposes for which the district is organized.

(b) The district's administrative costs shall be limited to 5 percent of the annual assessment revenue.

SEC. 15. Section 6047.88 of the Food and Agricultural Code is amended to read:

6047.88. Every district formed pursuant to this article has all of the powers prescribed by Section 6047.87 and other provisions of this article, regardless of any language in the petition for formation for any district or in any of the proceedings leading to the formation that would otherwise limit the power of the district.

SEC. 16. Section 6047.89 of the Food and Agricultural Code is amended to read:

6047.89. The county agricultural commissioner of the county in which the district is located shall, upon request of the board, assist the district to the extent possible in all activities undertaken by the district for the control of glassy-winged sharpshooter and Pierce's disease or other designated pests and diseases.

SEC. 16.5. Section 6047.92 of the Food and Agricultural Code is amended to read:

6047.92. For each fiscal year subsequent to the first year of operation of the district, the board shall adopt the final budget in the same manner that the budget for the first fiscal year was adopted.

SEC. 17. Section 6047.93 of the Food and Agricultural Code is repealed.

SEC. 18. Section 6047.94 of the Food and Agricultural Code is amended to read:

6047.94. The district shall identify any parcel of real property with more than one acre of table grape plants that shall be subject to assessments.

SEC. 19. Section 6047.96 of the Food and Agricultural Code is amended to read:

6047.96. (a) After the district has been formed, an owner of table grape acreage in the district may present to the board a request in writing for the exclusion of that acreage or any part of the acreage from the district upon a showing that the acreage or part of the acreage will not be benefited by the activities of the district. Factors that the board may consider in its determination for exclusion, as set forth in an affidavit

from the owner of the acreage, shall include those specified in Section 6047.74.

(b) After receipt of the request, the board shall cause an investigation of the parcel of acreage to be made and, if the board determines that the acreage or part of the acreage will not be benefited by the activities of the district and that exclusion of the acreage will not present a pest risk to the district, the board shall exclude the table grape acreage from the district and immediately certify this fact to the county assessor and the county auditor or tax collector.

(c) Any owner of table grape acreage outside of, or otherwise not included in, the district may present to the board a request in writing for inclusion of the acreage in the district.

SEC. 20. Section 6047.97 of the Food and Agricultural Code is amended to read:

6047.97. (a) The board shall, on or before the first Monday in April of each year, or as soon thereafter as possible, file with the board of supervisors a budget that sets forth all estimated expenditures of the district for the fiscal year commencing on the first day of July. A copy of the budget shall also, at the same time, be filed with the auditor of the county.

(b) The board of supervisors may, by ordinance or by resolution, adopted after notice and a hearing, determine and levy an assessment for table grape pest and disease control activities or other activities specified in subdivision (a) of Section 6047.87 related to designated pests and diseases for any of the following purposes:

(1) Responding to, managing, and controlling the effects of the spread of glassy-winged sharpshooter and other designated pests and diseases that attack table grape plants.

(2) Collecting and disseminating to table grape growers in the district relevant information and scientific studies concerning the pest or pests.

(3) Charting and determining the extent and location of any Pierce's disease infestations and infestations of other designated pests and diseases.

(4) Reimbursing the county or counties in which the district is located for expenses incurred in connection with providing services under this article that are not otherwise reimbursed.

(c) (1) The annual assessment shall not exceed fifteen dollars ($15) per planted acre.

(2) The maximum annual assessment shall be established in accordance with the voting requirements of Articles XIII C and XIII D of the California Constitution, as incorporated by Proposition 218 of 1996, as provided for in Section 6047.100.

(3) The board shall annually establish the assessment which shall not exceed the maximum annual assessment specified in paragraph (1), except as otherwise specified in this section.

(d) An annual assessment greater than the amount provided for in this section may not be charged unless a greater assessment is approved by eligible owners in accordance with the voting requirements of Articles XIII C and XIII D of the California Constitution, as incorporated by Proposition 218 of 1996, as provided for in Section 6047.100.

(e) The board of supervisors shall cause to be prepared and filed with the clerk of the board of supervisors a written report that contains all of the following information:

(1) A description of each parcel of property proposed to be subject to the assessment.

(2) The amount of the assessment of each parcel for the initial fiscal year.

(3) The maximum amount of the assessment that may be levied for each parcel during any fiscal year.

(4) The duration of the assessment.

(5) The basis of the assessment.

(6) The schedule of the assessment.

(7) A description specifying the requirements for written and oral protests, and the protest threshold necessary for requiring abandonment of the proposed assessment pursuant to subdivision (f).

(f) Unless otherwise excluded, the assessment shall be levied on each parcel within the boundaries of the district, zone, or area of benefit.

(g) (1) The board of supervisors shall comply with the notice, protest, and hearing procedures in Section 53753 of the Government Code.

(2) In addition, the mailed notice shall include the name of the district, the return address of the sender, the amount of the assessment for the initial fiscal year, the maximum amount of the assessment that may be levied during any fiscal year and the name and telephone number of the person designated by the board of supervisors to answer inquiries regarding the protest proceedings.

SEC. 21. Section 6047.101 of the Food and Agricultural Code is amended to read:

6047.101. The revenue from the assessments imposed pursuant to this article by the district are trust funds and shall be encumbered only for the purposes for which the district is formed and for the benefit of the acreage assessed. The district shall expend the minimum amount necessary for overhead and other administrative costs. No district funds shall be donated, loaned, or transferred to any other local agency or to the state for any purpose, except for the implementation of the duties of

the district, set forth under this article, as determined to be necessary by the district board.

SEC. 22. Section 6047.105 of the Food and Agricultural Code is amended to read:

6047.105. Acreage devoted exclusively to the growing of table grapes within a tract of land outside the district, but in the county in which the district is located, may be annexed to the district in the same manner provided in this article for the formation of the district.

SEC. 23. Section 6047.109 of the Food and Agricultural Code is amended to read:

6047.109. If the board of supervisors determines that consolidation is feasible and in the best interests of the table grape acreage owners of the respective districts, it shall, by resolution duly adopted, declare the districts consolidated into one district, giving the consolidated district a name that includes the term ''consolidated.'' Certified copies of the resolution shall be filed with the Secretary of State and with the county recorder of each county in which is located any part of the consolidated district. Upon the filing, the districts are consolidated into a single consolidated district with all the rights, privileges, and powers of a district. The consolidated district shall succeed to all the funds and other property, and is subject to all the indebtedness, bonded and otherwise, of the districts consolidated. Each district that is included in the consolidated district shall continue in existence for the purpose of representation on the board of the consolidated district, and for the purpose of levying, assessing, and collecting assessments for district purposes. The board of the consolidated district is, however, the board of each district that is included in the consolidated district.

SEC. 24. Section 6047.112 of the Food and Agricultural Code is amended to read:

6047.112. Any district that has been included in a consolidated district may withdraw from the consolidated district and be reconstituted as a separate district by filing with the board of directors of the consolidated district a petition for withdrawal that is signed by the owners of not less than a majority, by area, of table grape acreage in the district. The board of directors of the consolidated district shall send the original petition to the board of supervisors of the county in which the withdrawing district is located, and a copy of the petition to the board of supervisors of each of the other counties in which is located any part of the consolidated district. Upon receipt of a petition for withdrawal, the board of supervisors of the county in which the withdrawing district is located shall fix a time and place for hearing the petition. Notice shall be given and the hearing conducted in the same manner and with the same effect as prescribed for the formation of a district pursuant to Sections 6047.70, 6047.71, 6047.72, 6047.73, and 6047.74. Upon

withdrawal of a district, all moneys collected from the district for the use of the consolidated district, and all property purchased with these moneys, shall remain the property of the consolidated district.

SEC. 25. Section 6047.113 of the Food and Agricultural Code is amended to read:

6047.113. Upon the filing of a petition with the board of supervisors that is signed by either (1) 50 percent or more of the table grape acreage owners who own 65 percent or more of the affected acreage or by (2) 65 percent or more of the table grape acreage owners who own 50 percent or more of the affected acreage requesting the dissolution of the district, the board of supervisors shall set a time and place for hearing on the petition, which shall not be less than 20 days, or more than 40 days, after the filing of the petition.

SEC. 26. Section 6047.118 of the Food and Agricultural Code is amended to read:

6047.118. If, at the hearing, a majority of the board of supervisors does not find a compelling reason to override the owners' petition to dissolve the district, the board of supervisors shall by resolution dissolve the district.

SEC. 27. Section 6047.124 of the Food and Agricultural Code is amended to read:

6047.124. Owners of wine grapes and raisin grapes and any other agricultural commodities may petition to become subject to any district established pursuant to this article. The petition shall adhere to all the requirements of this article and shall require the approval of the board of directors of the affected district. All provisions of this article are hereby incorporated in this section and are applicable to owners who become subject to a district established pursuant to this article as though set forth in full in this section unless a provision in this article expressly states that it is not applicable to this section.

SEC. 28. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

The spread of the glassy-winged sharpshooter and Pierce's disease, and other designated pests and diseases, threatens the economic viability of the table grape industry. Because the immediate establishment of a pest control district is necessary to avoid severe economic loss, it is necessary for this act to take effect immediately.

CHAPTER 401

An act to add Section 1569.657 to the Health and Safety Code, relating to residential care facilities for the elderly.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 1569.657 is added to the Health and Safety Code, to read:

1569.657. (a) For any rate increase due to a change in the level of care of the resident, the licensee shall provide the resident and the resident's representative, if any, written notice of the rate increase within two business days after initially providing services at the new level of care. The notice shall include a detailed explanation of the additional services to be provided at the new level of care and an accompanying itemization of the charges.

(b) This section shall not apply to any resident of the facility who is a recipient of benefits pursuant to Article 5 (commencing with Section 12200) of Chapter 3 of Part 3 of Division 9 of the Welfare and Institutions Code under the State Supplementary Program for Aged, Blind and Disabled.

(c) This section shall not apply to a provider who has entered into one or more continuing care contracts at a licensed residential care facility for the elderly pursuant to a certificate of authority, as defined in paragraph (5) of subdivision (c) of Section 1771.

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 402

An act to amend Section 32425 of the Education Code, to add Section 17131.2 to the Revenue and Taxation Code, and to amend Section 2629.5 of the Unemployment Insurance Code, relating to settlements, and making an appropriation therefor.

[Approved by Governor September 9, 2004. Filed with
Secretary of State September 9, 2004.]

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

SECTION 1. Section 32425 of the Education Code is amended to read:

32425. To the extent permitted by federal law, excludable restitution payments, as defined in Section 17131.1 of the Revenue and Taxation Code, and excludable settlement payments, as defined in Section 17131.2 of the Revenue and Taxation Code, are not included in the income or resources of an individual who is eligible for the exclusion under Section 17131.1 or 17131.2 of the Revenue and Taxation Code, for determining eligibility for any grant, enrollment, or priority for services in any program under this code.

SEC. 2. Section 17131.2 is added to the Revenue and Taxation Code, to read:

17131.2. (a) Gross income does not include any excludable settlement payments received by an eligible individual (or the individual's heirs or estate) and any excludable interest.

(b) For purposes of this section:

(1) The basis of any property received by an eligible individual (or the individual's heirs or estate) as part of an excludable settlement payment shall be the fair market value of that property as of the time of the receipt.

(2) ''Eligible individual'' means a person who was persecuted on the basis of race or religion by the regime that was in control of the Ottoman Turkish Empire from 1915 through 1923.

(3) ''Excludable settlement payment'' means any payment or distribution to an individual (or the individual's heirs or estate) that is any of the following:

(A) Is payable by reason of the individual's status as an eligible individual, including any amount payable by any foreign or domestic entity or a fund established by any entity, any amount payable as a result of a final resolution of a legal action, and any amount payable under a law providing for payments or restitution of property.

(B) Constitutes compensation to the individual from 1915 until 1923, by reason of the individual's status as an eligible individual, including any proceeds of insurance under policies issued on eligible individuals immediately before 1915 and during the time period from 1915 until 1923.

(C) Consists of interest that is payable as part of any payment or distribution described in subparagraph (A) or (B).

(4) ''Excludable interest'' means any interest earned by any of the following:

(A) A fund to benefit eligible individuals or their heirs created by an international commission or an international organization.

(B) A fund subject to the administration of the United States courts created to provide excludable settlement payments to eligible individuals (or eligible individuals' heirs or estates).

(c) (1) This section applies to any amount received on or after January 1, 2005.

(2) This section may not be construed to create any inference with respect to the proper tax treatment of any amount received before January 1, 2005.

SEC. 3. Section 2629.5 of the Unemployment Insurance Code is amended to read:

2629.5. To the extent permitted by federal law, excludable restitution payments, as defined in Section 17131.1 of the Revenue and Taxation Code, and excludable settlement payments, as defined in Section 17131.2 of the Revenue and Taxation Code, may not be applied to reduce the amount of disability benefits to which an individual may otherwise be entitled under law.

CHAPTER 403

An act to amend Sections 13352.5, 13352.6, 23538, and 23542 of, and to add Section 13352.2 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 13352.2 is added to the Vehicle Code, to read:

13352.2. (a) If a person is required under Section 13352 to provide the department with proof of enrollment in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code, the department shall deem that requirement satisfied upon receiving at its headquarters proof of enrollment that is satisfactory to the department and has been forwarded to the department by the program provider.

(b) If a person is required under Section 13352 to provide the department with proof of completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, or a program specified in Section 8001 of the Penal Code, the department shall deem that requirement satisfied upon receiving at its

headquarters proof of completion that is satisfactory to the department and has been forwarded to the department by the program provider.

SEC. 2. Section 13352.5 of the Vehicle Code is amended to read:

13352.5. (a) The department shall issue a restricted driver's license to a person granted probation under the conditions described in subdivision (b) of Section 23542, or to a person described in subdivision (h), instead of suspending that person's license, if all of the following requirements have been met:

(1) Proof satisfactory to the department of enrollment in, or completion of, a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in paragraph (4) of subdivision (b) of Section 23542 has been received in the department's headquarters.

(2) The person submits proof of financial responsibility, as described in Section 16430.

(3) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(b) The restriction of the driving privilege shall become effective when the department receives all of the documents and fees required under subdivision (a) and shall remain in effect for the duration of the treatment program described in paragraph (4) of subdivision (b) of Section 23542.

(c) The restriction of the driving privilege shall be limited to the hours necessary for driving to and from the place of employment, driving during the course of employment, and driving to and from activities required in the treatment program.

(d) Whenever the driving privilege is restricted under this section, proof of financial responsibility, as defined in Section 16430, shall be maintained for three years. If the person does not maintain that proof of financial responsibility at any time during the restriction, the driving privilege shall be suspended until proof pursuant to Section 16484 is received by the department.

(e) The restriction imposed under this section may be removed when evidence satisfactory to the department that the person has completed a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code has been received in the department's headquarters. For the purposes of this section, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit may be given to any program activities completed prior to the date of the current violation.

(f) The department shall immediately terminate the restriction imposed pursuant to this section and shall suspend the privilege to drive under paragraph (3) of subdivision (a) of Section 13352 upon receipt of

notification from the treatment program that the person has failed to comply with the program requirements.

(g) Any person restricted pursuant to this section may apply to the department for a restricted driver's license, subject to the conditions specified in paragraph (3) of subdivision (a) of Section 13352. Whenever proof of financial responsibility has already been provided and a restriction fee has been paid in compliance with restrictions described in this section, and the offender subsequently receives an ignition interlock device restriction described in paragraph (3) of subdivision (a) of Section 13352, the proof of financial responsibility period shall not be extended beyond the previously established term and no additional restriction fee shall be required.

(h) This section applies to a person who meets all of the following conditions:

(1) Has been convicted of a violation of Section 23152 that occurred on or before July 1, 1999, and is punishable under Section 23540, or former Section 23165.

(2) Was granted probation for the conviction subject to conditions imposed under subdivision (b) of Section 23542, or under subdivision (b) of former Section 23166.

(3) Is no longer subject to the probation described in paragraph (2).

(4) Has not completed the licensed driving-under-the-influence program under paragraph (3) of subdivision (a) of Section 13352 for reinstatement of the driving privilege.

(5) Has no violations in his or her driving record that would preclude issuance of a restricted driver's license.

SEC. 2.3. Section 13352.5 of the Vehicle Code is amended to read:

13352.5. (a) The department shall issue a restricted driver's license to a person granted probation under the conditions described in subdivision (b) of Section 23542, or to a person described in subdivision (h), instead of suspending that person's license, if all of the following requirements have been met:

(1) Proof satisfactory to the department of enrollment in, or completion of, a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in paragraph (4) of subdivision (b) of Section 23542 has been received in the department's headquarters.

(2) The person submits proof of financial responsibility, as described in Section 16430.

(3) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(b) The restriction of the driving privilege shall become effective when the department receives all of the documents and fees required under subdivision (a) and shall remain in effect for the duration of the

treatment program described in paragraph (4) of subdivision (b) of Section 23542.

(c) The restriction of the driving privilege shall be limited to the hours necessary for driving to and from the place of employment, driving during the course of employment, and driving to and from activities required in the treatment program.

(d) Whenever the driving privilege is restricted under this section, proof of financial responsibility, as defined in Section 16430, shall be maintained for three years. If the person does not maintain that proof of financial responsibility at any time during the restriction, the driving privilege shall be suspended until proof pursuant to Section 16484 is received by the department.

(e) The restriction imposed under this section may be removed when evidence satisfactory to the department that the person has completed a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code has been received in the department's headquarters. For the purposes of this section, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit may be given to any program activities completed prior to the date of the current violation.

(f) The department shall immediately terminate the restriction imposed pursuant to this section and shall suspend the privilege to drive under paragraph (3) of subdivision (a) of Section 13352 upon receipt of notification from the treatment program that the person has failed to comply with the program requirements.

(g) Any person restricted pursuant to this section may apply to the department for a restricted driver's license, subject to the conditions specified in paragraph (3) of subdivision (a) of Section 13352. Whenever proof of financial responsibility has already been provided and a restriction fee has been paid in compliance with restrictions described in this section, and the offender subsequently receives an ignition interlock device restriction described in paragraph (3) of subdivision (a) of Section 13352, the proof of financial responsibility period shall not be extended beyond the previously established term and no additional restriction fee shall be required.

(h) This section applies to a person who meets all of the following conditions:

(1) Has been convicted of a violation of Section 23152 that occurred on or before July 1, 1999, and is punishable under Section 23540, or former Section 23165.

(2) Was granted probation for the conviction subject to conditions imposed under subdivision (b) of Section 23542, or under subdivision (b) of former Section 23166.

(3) Is no longer subject to the probation described in paragraph (2).

(4) Has not completed the licensed driving-under-the-influence program under paragraph (3) of subdivision (a) of Section 13352 for reinstatement of the driving privilege.

(5) Has no violations in his or her driving record that would preclude issuance of a restricted driver's license.

(i) This section shall become inoperative on September 20, 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. 2.5. Section 13352.5 is added to the Vehicle Code, to read:

13352.5. (a) The department shall issue a restricted driver's license to a person whose driver's license was suspended under paragraph (3) of subdivision (a) of Section 13352, if all of the following requirements have been met:

(1) Proof satisfactory to the department of enrollment in, or completion of, a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as described in subdivision (b) of Section 23542 has been received in the department's headquarters.

(2) The person submits proof of financial responsibility, as described in Section 16430.

(3) The person completes not less than 12 months of the suspension period imposed under paragraph (3) of subdivision (a) of Section 13352. The 12 months may include credit for any suspension period served under subdivision (c) of Section 13353.3.

(4) The person pays all applicable reinstatement or reissue fees and any restriction fee required by the department.

(b) The restriction of the driving privilege shall become effective when the department receives all of the documents and fees required under subdivision (a) and shall remain in effect until the final day of the original suspension imposed under paragraph (3) of subdivision (a) of Section 13352, or until the date all reinstatement requirements described in Section 13352 have been met, whichever date is later.

(c) The restriction of the driving privilege shall be limited to the hours necessary for driving to and from the person's place of employment, driving during the course of employment, and driving to and from activities required in the driving-under-the-influence program.

(d) Whenever the driving privilege is restricted under this section, proof of financial responsibility, as defined in Section 16430, shall be maintained for three years. If the person does not maintain that proof of financial responsibility at any time during the restriction, the driving privilege shall be suspended until the proof required under Section 16484 is received by the department.

(e) For the purposes of this section, enrollment, participation, and completion of an approved program shall be subsequent to the date of the current violation. No credit may be given to any program activities completed prior to the date of the current violation.

(f) The department shall terminate the restriction imposed pursuant to this section and shall suspend the privilege to drive under paragraph (3) of subdivision (a) of Section 13352 upon receipt of notification from the driving-under-the-influence program that the person has failed to comply with the program requirements.

(g) If, upon conviction, the court has made the determination, as authorized under subdivision (b) of Section 23540 or subdivision (d) of Section 23542, to disallow the issuance of a restricted driver's license, the department may not issue a restricted driver's license under this section.

(h) Any person restricted pursuant to this section may apply to the department for a restricted driver's license, subject to the conditions specified in paragraph (3) of subdivision (a) of Section 13352. Whenever proof of financial responsibility has already been provided and a restriction fee has been paid in compliance with restrictions described in this section, and the offender subsequently receives an ignition interlock device restriction described in paragraph (3) of subdivision (a) of Section 13352, the proof of financial responsibility period shall not be extended beyond the previously established term and no additional restriction fee shall be required.

(i) This section applies to a person who meets all of the following conditions:

(1) Has been convicted of a violation of Section 23152 that occurred on or before July 1, 1999, and is punishable under Section 23540, or former Section 23165.

(2) Was granted probation for the conviction subject to conditions imposed under subdivision (b) of Section 23542, or under subdivision (b) of former Section 23166.

(3) Is no longer subject to the probation described in paragraph (2).

(4) Has not completed the licensed driving-under-the-influence program under paragraph (3) of subdivision (a) of Section 13352 for reinstatement of the driving privilege.

(5) Has no violations in his or her driving record that would preclude issuance of a restricted driver's license.

(j) This section shall become operative on September 20, 2005.

SEC. 3. Section 13352.6 of the Vehicle Code is amended to read:

13352.6. (a) The department shall immediately suspend the driving privilege of any person who is 18 years of age or older and is convicted of a violation of Section 23140, upon receipt of a duly certified abstract of the record of any court showing that conviction. The privilege may

not be reinstated until the person provides the department with proof of financial responsibility and until proof satisfactory to the department of successful completion of a driving-under-the-influence program licensed under Section 11836 of the Health and Safety Code has been received in the department's headquarters. That attendance shall be as follows:

(1) If, within seven years of the current violation of Section 23140, the person has not been convicted of a separate violation of Section 23140, 23152, or 23153, or of Section 23103, with a plea of guilty under Section 23103.5, or of Section 655 of the Harbors and Navigation Code, or of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, the person shall complete, at a minimum, the education component of that licensed driving-under-the-influence program.

(2) If the person does not meet the requirements of paragraph (1), the person shall complete, at a minimum, the program described in paragraph (1) of subdivision (c) of Section 11837 of the Health and Safety Code.

(b) For the purposes of this section, enrollment, participation, and completion of the program shall be subsequent to the date of the current violation. No credit for enrollment, participation, or completion may be given for any program activities completed prior to the date of the current violation.

SEC. 3.5. Section 13352.6 of the Vehicle Code is amended to read:

13352.6. (a) The department shall immediately suspend the driving privilege of any person who is 18 years of age or older and is convicted of a violation of Section 23140, upon the receipt of a duly certified abstract of the record of any court showing that conviction. The privilege may not be reinstated until the person provides the department with proof of financial responsibility and until proof satisfactory to the department, of successful completion of a driving-under-the-influence program licensed under Section 11836 of the Health and Safety Code has been received in the department's headquarters. That attendance shall be as follows:

(1) If, within 10 years of the current violation of Section 23140, the person has not been convicted of a separate violation of Section 23140, 23152, or 23153, or of Section 23103, with a plea of guilty under Section 23103.5, or of Section 655 of the Harbors and Navigation Code, or of Section 191.5 of, or paragraph (3) of subdivision (c) of Section 192 of, the Penal Code, the person shall complete, at a minimum, the education component of that licensed driving-under-the-influence program.

(2) If the person does not meet the requirements of paragraph (1), the person shall complete, at a minimum, the program described in

paragraph (1) of subdivision (c) of Section 11837 of the Health and Safety Code.

(b) For the purposes of this section, enrollment, participation, and completion of the program shall be subsequent to the date of the current violation. Credit for enrollment, participation, or completion may not be given for any program activities completed prior to the date of the current violation.

SEC. 4. Section 23538 of the Vehicle Code is amended to read:

23538. (a) Except as provided in subdivision (d), if the court grants probation to any person punished under Section 23536, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to one of the following:

(1) Be confined in the county jail for at least 48 hours but not more than six months, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000). Except as provided in paragraph (2), the person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (1) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000), and, if the person gives proof of financial responsibility, as defined in Section 16430, to the Department of Motor Vehicles, have the privilege to operate a motor vehicle restricted for 90 days to necessary travel to and from that person's place of employment and to and from participation in a program described in subdivision (b). If driving a motor vehicle is necessary to perform the duties of the person's employment, the restriction also shall allow the person to drive to locations within the person's scope of employment. Whenever the driving privilege is restricted pursuant to this paragraph, the person shall maintain proof of financial responsibility for three years.

(3) If the court elects to order a 90-day restriction as provided for in paragraph (2), the court shall order and advise the person of the following matters:

(A) If the person's privilege to operate a motor vehicle is suspended under Section 13353.2, the court-ordered restriction does not allow the person to operate a motor vehicle unless the suspension under Section 13353.2 has either been served to completion or set aside, and his or her license has been reinstated. The restriction of the driver's license described in paragraph (2) shall commence upon the reinstatement of the privilege to operate a motor vehicle.

(B) If a suspension was not imposed pursuant to Section 13353.2, the person shall be advised by the court that the person's driving privilege may be suspended by the department pursuant to subdivision (c) of Section 13352.4 until proof of financial responsibility is provided.

(b) In any county where the board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, a program or programs described in Section 11837.3 of the Health and Safety Code, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete a driving-under-the-influence program, licensed pursuant to Section 11836 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.

(1) The court shall refer a first offender whose blood-alcohol concentration was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(2) The court shall refer a first offender whose blood-alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test, to participate for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(3) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code has been received in the department's headquarters.

(c) (1) The court shall revoke the person's probation pursuant to Section 23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).

(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the State Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.

(d) Notwithstanding subdivision (a), if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement specified in Section 15278, the court shall upon conviction order the department to suspend the driver's privilege pursuant to paragraph (1) of subdivision (a) of Section 13352.

SEC. 4.3. Section 23538 of the Vehicle Code is amended to read:

23538. (a) Except as provided in subdivision (d), if the court grants probation to any person punished under Section 23536, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person be subject to one of the following:

(1) Be confined in the county jail for at least 48 hours but not more than six months, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000). Except as provided in paragraph (2), the person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (1) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(2) Pay a fine of at least three hundred ninety dollars ($390) but not more than one thousand dollars ($1,000), and, if the person gives proof of financial responsibility, as defined in Section 16430, to the Department of Motor Vehicles, have the privilege to operate a motor vehicle restricted for 90 days to necessary travel to and from that person's place of employment and to and from participation in a program described in subdivision (b). If driving a motor vehicle is necessary to perform the duties of the person's employment, the restriction also shall allow the person to drive to locations within the person's scope of employment. Whenever the driving privilege is restricted pursuant to this paragraph, the person shall maintain proof of financial responsibility for three years.

(3) If the court elects to order a 90-day restriction as provided for in paragraph (2), the court shall order and advise the person of the following matters:

(A) If the person's privilege to operate a motor vehicle is suspended under Section 13353.2, the court-ordered restriction does not allow the person to operate a motor vehicle unless the suspension under Section 13353.2 has either been served to completion or set aside, and his or her license has been reinstated. The restriction of the driver's license described in paragraph (2) shall commence upon the reinstatement of the privilege to operate a motor vehicle.

(B) If a suspension was not imposed pursuant to Section 13353.2, the person shall be advised by the court that the person's driving privilege

may be suspended by the department pursuant to subdivision (c) of Section 13352.4 until proof of financial responsibility is provided.

(b) In any county where the board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, a program or programs described in Section 11837.3 of the Health and Safety Code, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete a driving-under-the-influence program, licensed pursuant to Section 11836 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court.

(1) The court shall refer a first offender whose blood-alcohol concentration was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(2) The court shall refer a first offender whose blood-alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test, to participate for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(3) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code has been received in the department's headquarters.

(c) (1) The court shall revoke the person's probation pursuant to Section 23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).

(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the State Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.

(d) Notwithstanding subdivision (a), if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with

an endorsement specified in Section 15278, the court shall upon conviction order the department to suspend the driver's privilege pursuant to paragraph (1) of subdivision (a) of Section 13352.

(e) This section shall become inoperative on September 20, 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. 4.5. Section 23538 is added to the Vehicle Code, to read:

23538. (a) (1) If the court grants probation to a person punished under Section 23536, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as a condition of probation that the person pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000). The court may also impose, as a condition of probation, that the person be confined in a county jail for at least 48 hours, but not more than six months.

(2) The person's privilege to operate a motor vehicle shall be suspended by the department under paragraph (1) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(3) Whenever, when considering the circumstances taken as a whole, the court determines that the person punished under this section would present a traffic safety or public safety risk if authorized to operate a motor vehicle during the period of suspension imposed under paragraph (1) of subdivision (a) of Section 13352, the court may disallow the issuance of a restricted driver's license required under Section 13352.4.

(b) In any county where the board of supervisors has approved, and the State Department of Alcohol and Drug Programs has licensed, a program or programs described in Section 11837.3 of the Health and Safety Code, the court shall also impose as a condition of probation that the driver shall enroll and participate in, and successfully complete a driving-under-the-influence program, licensed pursuant to Section 11836 of the Health and Safety Code, in the driver's county of residence or employment, as designated by the court. For the purposes of this subdivision, enrollment in, participation in, and completion of an approved program shall be subsequent to the date of the current violation. Credit may not be given for any program activities completed prior to the date of the current violation.

(1) The court shall refer a first offender whose blood-alcohol concentration was less than 0.20 percent, by weight, to participate for at least three months or longer, as ordered by the court, in a licensed program that consists of at least 30 hours of program activities, including those education, group counseling, and individual interview sessions

described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(2) The court shall refer a first offender whose blood-alcohol concentration was 0.20 percent or more, by weight, or who refused to take a chemical test, to participate for at least six months or longer, as ordered by the court, in a licensed program that consists of at least 45 hours of program activities, including those education, group counseling, and individual interview sessions described in Chapter 9 (commencing with Section 11836) of Part 2 of Division 10.5 of the Health and Safety Code.

(3) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the department of successful completion of a driving-under-the-influence program of the length required under this code that is licensed pursuant to Section 11836 of the Health and Safety Code has been received in the department's headquarters.

(c) (1) The court shall revoke the person's probation pursuant to Section 23602, except for good cause shown, for the failure to enroll in, participate in, or complete a program specified in subdivision (b).

(2) The court, in establishing reporting requirements, shall consult with the county alcohol program administrator. The county alcohol program administrator shall coordinate the reporting requirements with the department and with the State Department of Alcohol and Drug Programs. That reporting shall ensure that all persons who, after being ordered to attend and complete a program, may be identified for either (A) failure to enroll in, or failure to successfully complete, the program, or (B) successful completion of the program as ordered.

(d) This section shall become operative on September 20, 2005.

SEC. 5. Section 23542 of the Vehicle Code is amended to read:

23542. If the court grants probation to any person punished under Section 23540, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 10 days but not more than one year, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of Motor Vehicles pursuant to paragraph (3) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) All of the following:

(1) Be confined in the county jail for at least 96 hours, but not more than one year. A sentence of 96 hours of confinement shall be served in

two increments consisting of a continuous 48 hours each. The two 48-hour increments may be served nonconsecutively.

(2) Pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000).

(3) Have the privilege to operate a motor vehicle be restricted by the Department of Motor Vehicles pursuant to Section 13352.5. Until all conditions prescribed in this section are met, the person's driving privilege is suspended pursuant to paragraph (3) of subdivision (a) of Section 13352. This paragraph does not apply if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement prescribed in Section 15278.

(4) Either of the following:

(A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation.

(c) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code has been received in the department's headquarters.

SEC. 5.3. Section 23542 of the Vehicle Code is amended to read:

23542. If the court grants probation to any person punished under Section 23540, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be subject to either subdivision (a) or (b), as follows:

(a) Be confined in the county jail for at least 10 days but not more than one year, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000). The person's privilege to operate a motor vehicle shall be suspended by the Department of

Motor Vehicles pursuant to paragraph (3) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) All of the following:

(1) Be confined in the county jail for at least 96 hours, but not more than one year. A sentence of 96 hours of confinement shall be served in two increments consisting of a continuous 48 hours each. The two 48-hour increments may be served nonconsecutively.

(2) Pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000).

(3) Have the privilege to operate a motor vehicle be restricted by the Department of Motor Vehicles pursuant to Section 13352.5. Until all conditions prescribed in this section are met, the person's driving privilege is suspended pursuant to paragraph (3) of subdivision (a) of Section 13352. This paragraph does not apply if the offense occurred in a vehicle requiring a driver with a class A or class B driver's license or with an endorsement prescribed in Section 15278.

(4) Either of the following:

(A) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(B) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation.

(c) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code has been received in the department's headquarters.

(d) This section shall become inoperative on September 20, 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. 5.5. Section 23542 is added to the Vehicle Code, to read:

23542. (a) (1) If the court grants probation to a person punished under Section 23540, in addition to the provisions of Section 23600 and any other terms and conditions imposed by the court, the court shall impose as conditions of probation that the person be confined in a county jail and fined under either of the following:

(A) For at least 10 days, but not more than one year, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000).

(B) For at least 96 hours, but not more than one year, and pay a fine of at least three hundred ninety dollars ($390), but not more than one thousand dollars ($1,000). A sentence of 96 hours of confinement shall be served in two increments consisting of a continuous 48 hours each. The two 48-hour increments may be served nonconsecutively.

(2) The person's privilege to operate a motor vehicle shall be suspended by the department under paragraph (3) of subdivision (a) of Section 13352. The court shall require the person to surrender the driver's license to the court in accordance with Section 13550.

(b) In addition to the conditions specified in subdivision (a), the court shall require the person to do either of the following:

(1) Enroll and participate, for at least 18 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code, as designated by the court. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation. The program shall provide for persons who cannot afford the program fee pursuant to paragraph (2) of subdivision (b) of Section 11837.4 of the Health and Safety Code in order to enable those persons to participate.

(2) Enroll and participate, for at least 30 months subsequent to the date of the underlying violation and in a manner satisfactory to the court, in a driving-under-the-influence program licensed pursuant to Section 11836 of the Health and Safety Code. The person shall complete the entire program subsequent to, and shall not be given any credit for any program activities completed prior to, the date of the current violation.

(c) The court shall advise the person at the time of sentencing that the driving privilege shall not be restored until proof satisfactory to the Department of Motor Vehicles of successful completion of a driving-under-the-influence program of the length required under this code licensed pursuant to Section 11836 of the Health and Safety Code has been received in the department's headquarters.

(d) Whenever, when considering the circumstances taken as a whole, the court determines that the person punished under this section would

present a traffic safety or public safety risk if authorized to operate a motor vehicle during the period of suspension imposed under paragraph (3) of subdivision (a) of Section 13352, the court may disallow the issuance of a restricted driver's license required under Section 13352.5.

(e) This section shall become operative on September 20, 2005.

SEC. 6. Sections 2.3 and 2.5 of this bill incorporate amendments to Section 13352.5 of the Vehicle Code proposed by both this bill and SB 1697. Sections 2.3 and 2.5 of this bill shall become operative only if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 13352.5 of the Vehicle Code, and (3) this bill is enacted after SB 1697, in which case Section 2 of this bill shall not become operative.

SEC. 7. Section 3.5 of this bill incorporates amendments to Section 13352.6 of the Vehicle Code proposed by both this bill and SB 1694. Section 3.5 of this bill shall become operative only if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 13352.6 of the Vehicle Code, and (3) this bill is enacted after SB 1694, in which case Section 3 of this bill shall not become operative.

SEC. 8. Section 4.3 and 4.5 of this bill incorporate amendments to Section 23538 of the Vehicle Code proposed by both this bill and SB 1697. Sections 4.3 and 4.5 of this bill shall become operative only if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 23538 of the Vehicle Code, and (3) this bill is enacted after SB 1697, in which case Section 4 of this bill shall not become operative.

SEC. 9. Sections 5.3 and 5.5 of this bill incorporate amendments to Section 23542 of the Vehicle Code proposed by both this bill and SB 1697. Sections 5.3 and 5.5 of this bill shall become operative only if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 23542 of the Vehicle Code, and (3) this bill is enacted after SB 1697, in which case Section 5 of this bill shall not become operative.

CHAPTER 404

An act to amend Sections 415, 462, 467, 545, 2418.5, 9410, 22507.5, 22511.5, 22511.55, 22511.57, 22511.59, 22511.8, 22652, 22658.2, and 25276 of, to amend, repeal, and add Section 5007 of, and to add Section 5007.5 to, the Vehicle Code, relating to vehicles.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 415 of the Vehicle Code is amended to read:

415. (a) A ''motor vehicle'' is a vehicle that is self-propelled.

(b) ''Motor vehicle'' does not include a self-propelled wheelchair, motorized tricycle, or motorized quadricycle, if operated by a person who, by reason of physical disability, is otherwise unable to move about as a pedestrian.

(c) For purposes of Chapter 6 (commencing with Section 3000) of Division 2, ''motor vehicle'' includes a recreational vehicle as that term is defined in subdivision (a) of Section 18010 of the Health and Safety Code, but does not include a truck camper.

SEC. 2. Section 462 of the Vehicle Code is amended to read:

462. A ''paratransit vehicle'' is a passenger vehicle, other than a bus, schoolbus, school pupil activity bus, youth bus, general public paratransit vehicle, or taxicab that is both of the following:

(a) (1) Operated for hire by a business, nonprofit organization, or the state, or a political subdivision of the state utilizing drivers who receive compensation for their services and who spend a majority of their workweek operating a passenger vehicle.

(2) For the purposes of this subdivision, compensation does not include reimbursement to volunteer drivers of the cost of providing transportation services at a rate not greater than that approved by the United States Internal Revenue Service for volunteers.

(3) For the purposes of this subdivision, ''for hire'' means that the entity providing transportation services is compensated for the transportation under contract or agreement.

(b) Regularly used to provide transportation services to any of the following:

(1) Disabled persons who meet the definition of handicapped persons, as defined in Section 99206.5 of the Public Utilities Code.

(2) Persons with a developmental disability, as defined in subdivision (a) of Section 4512 of the Welfare and Institutions Code.

(3) Individuals with disabilities who are determined to be eligible for complementary paratransit services under Title II of the Americans with Disabilities Act of 1990 (P.L.101-336).

(4) Persons who are 55 years of age or older.

SEC. 3. Section 467 of the Vehicle Code, as amended by Section 4 of Chapter 979 of the Statutes of 2002, is amended to read:

467. (a) A ''pedestrian'' is any person who is afoot or who is using any of the following:

(1) A means of conveyance propelled by human power other than a bicycle.

(2) An electric personal assistive mobility device.

(b) ''Pedestrian'' includes any person who is operating a self-propelled wheelchair, motorized tricycle, or motorized quadricycle and, by reason of physical disability, is otherwise unable to move about as a pedestrian, as specified in subdivision (a).

(c) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 4. Section 467 of the Vehicle Code, as added by Section 5 of Chapter 979 of the Statutes of 2002, is amended to read:

467. (a) A ''pedestrian'' is any person who is afoot or who is using a means of conveyance propelled by human power other than a bicycle.

(b) ''Pedestrian'' includes any person who is operating a self-propelled wheelchair, motorized tricycle, or motorized quadricycle and, by reason of physical disability, is otherwise unable to move about as a pedestrian, as specified in subdivision (a).

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

SEC. 5. Section 545 of the Vehicle Code is amended to read:

545. A ''schoolbus'' is a motor vehicle designed, used, or maintained for the transportation of any school pupil at or below the 12th-grade level to or from a public or private school or to or from public or private school activities, except the following:

(a) A motor vehicle of any type carrying only members of the household of the owner thereof.

(b) A motortruck transporting pupils who are seated only in the passenger compartment, or a passenger vehicle designed for and carrying not more than 10 persons, including the driver, unless the vehicle or truck is transporting two or more disabled pupils confined to wheelchairs.

(c) A motor vehicle operated by a common carrier, or by and under the exclusive jurisdiction of a publicly owned or operated transit system, only during the time it is on a scheduled run and is available to the general public, or on a run scheduled in response to a request from a disabled pupil confined to a wheelchair, or from a parent of the disabled pupil, for transportation to or from nonschool activities; provided, that the motor vehicle is designed for and actually carries not more than 16 persons including the driver, is available to eligible persons of the general public, and the school does not provide the requested transportation service.

(d) A school pupil activity bus.

(e) A motor vehicle operated by a carrier licensed by the Interstate Commerce Commission which is transporting pupils on a school activity entering or returning to the state from another state or country.

(f) A youth bus.

(g) Notwithstanding any other provisions of this section, the governing board of a district maintaining a community college may, by resolution, designate any motor vehicle operated by or for the district, a schoolbus within the meaning of this section, if it is primarily used for the transportation of community college students to or from a public community college or to or from public community college activities. The designation shall not be effective until written notification thereof has been filed with the Department of the California Highway Patrol.

(h) A state-owned motor vehicle being operated by a state employee upon the driveways, paths, parking facilities, or grounds specified in Section 21113 that are under the control of a state hospital under the jurisdiction of the State Department of Developmental Services where the posted speed limit is not more than 20 miles per hour. The motor vehicle may also be operated for a distance of not more than one-quarter mile upon a public street or highway that runs through the grounds of a state hospital under the jurisdiction of the State Department of Developmental Services, if the posted speed limit on the public street or highway is not more than 25 miles per hour and if all traffic is regulated by posted stop signs or official traffic control signals at the points of entry and exit by the motor vehicle.

(i) A general public paratransit vehicle, provided that the general public paratransit vehicle does not duplicate existing schoolbus service, does not transport a public school pupil at or below the 12th grade level to a destination outside of that pupil's school district, and is not used to transport public school pupils in areas where schoolbus services were available during the 1986–87 school year. In areas where expanded school services require expanded transportation of public school pupils, as determined by the governing board of a school district, general public paratransit vehicles shall not be used to transport those pupils for a period of three years from the date that a need for expansion is identified. For purposes of this section, a pupil is defined as a student at or below the 12th grade level who is being transported to a mandated school activity.

(j) A schoolbus with the flashing red light signal system, the amber warning system, and the schoolbus signs covered, while being used for transportation of persons other than pupils, to or from school or school related activities.

SEC. 6. Section 2418.5 of the Vehicle Code is amended to read:

2418.5. (a) Notwithstanding any other provision of law, every emergency ambulance that is operated within this state by any public or private agency, including, but not limited to, any emergency ambulance that is operated by the State of California, any charter or general law city or county, or any district, shall be equipped at all times with a resuscitator.

(b) For purposes of this section ''emergency ambulance'' means a vehicle that is designed or intended to be used in providing emergency transportation of wounded, injured, sick, disabled, or incapacitated human beings.

(c) For the purposes of this section, a ''resuscitator'' means a device that adequately, effectively and safely restores breathing, including, but not limited to, a portable hand-operated, self-refilling bag-valve mask unit for inflation of the lungs with either air or oxygen. The resuscitator shall not have any straps that could be used to attach the resuscitator to the human head.

SEC. 7. Section 5007 of the Vehicle Code is amended to read:

5007. (a) The department shall, upon application and without additional fees, issue a special license plate or plates to a disabled person or disabled veteran, pursuant to procedures adopted by the department.

(b) The special license plates issued to a disabled person or disabled veteran shall run in a regular numerical series that shall include one or more unique two-letter codes reserved for disabled person that license plates or disabled veteran license plates. The International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641 commonly known as the ''wheelchair symbol'' shall be depicted on each plate.

(c) (1) Prior to issuing a disabled person or disabled veteran a special license plate, 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 a person who has lost, or has lost use of, one or more lower extremities or one hand, for a disabled veteran, or both hands, for a disabled person 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.

(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.

(d) The special license plate shall, upon the death of the disabled person or disabled veteran, be returned to the department within 60 days or upon the expiration of the vehicle registration, whichever occurs first.

(e) 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. 8. Section 5007 is added to the Vehicle Code, to read:

5007. (a) The department shall, upon application and without additional fees, issue a special license plate or plates to a disabled person or disabled veteran, pursuant to procedures adopted by the department.

(b) The special license plates issued to a disabled person or disabled veteran shall run in a regular numerical series that shall include one or more unique two-letter codes reserved for disabled person license plates or disabled veteran license plates. The International Symbol of Access adopted pursuant to Section 3 of Public Law 100-641 commonly known as the ''wheelchair symbol'' shall be depicted on each plate.

(c) (1) Prior to issuing a special license plate to a disabled person or disabled veteran 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 a person who has lost, or has lost use of, one or more lower extremities or one hand, for a disabled veteran, or both hands for a disabled person, 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, surgeon, chiropractor, or optometrist certifying the qualifying disability shall provide a full description of the illness or disability on the form submitted to the department.

(2) The physician, surgeon, chiropractor, or optometrist 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 or the appropriate regulatory board.

(d) A disabled person or disabled veteran issued a license plate or plates under this section shall, upon request, present to a peace officer, or person authorized to enforce parking laws, ordinances, or regulations, a certification form that substantiates the eligibility of the disabled person or veteran to possess the plate or plates. The certification shall be on a form prescribed by the department and contain the name of the disabled person or veteran to whom the plate or plates were issued, and the name, address, and telephone number of the medical professional described in subdivision (c) who certified the eligibility of the person or veteran for the plate or plates.

(e) The special license plate shall, upon the death of the disabled person or disabled veteran, be returned to the department within 60 days or upon the expiration of the vehicle registration, whichever occurs first.

(f) This section shall become operative on July 1, 2005.

SEC. 9. Section 5007.5 is added to the Vehicle Code, to read:

5007.5. (a) Upon a receipt of request for information by a local law enforcement agency or local or state agency responsible for the administration or enforcement of parking regulations, the department shall make available to the requesting agency any information contained in a physician's certificate submitted to the department to substantiate the disability of a person applying for or who has been issued special license plates pursuant to Section 5007. The department shall not provide the information specified in this subdivision to any private entity or third-party parking citation processing agency.

(b) A local authority may establish a review board or panel, for the purposes of reviewing information contained in applications for special license plates and the certification of qualifying disabilities for persons residing within the jurisdiction of the local authority. The review board shall include a physician or other medical authority. Any findings or determinations by a review board or panel under this section indicating that an application or certification is fraudulent or lacks proper certification shall be transmitted to the department or other appropriate authorities for further review and investigation.

SEC. 10. Section 9410 of the Vehicle Code is amended to read:

9410. (a) One commercial vehicle weighing less than 8,001 pounds unladen, which displays the distinguishing license plate designated in, and is registered to a person who qualifies for the exemption provided by, Section 22511.5, is exempt from the weight fees provided for in Section 9400.

(b) A commercial vehicle displaying a distinguishing placard pursuant to Section 22511.5 is not exempt from weight fees.

SEC. 11. Section 22507.5 of the Vehicle Code is amended to read:

22507.5. (a) Notwithstanding Section 22507, local authorities may, by ordinance or resolution, prohibit or restrict the parking or standing of vehicles on certain streets or highways, or portions thereof, between the hours of 2 a.m. and 6 a.m., and may, by ordinance or resolution, prohibit or restrict the parking or standing, on any street, or portion thereof, in a residential district, of commercial vehicles having a manufacturer's gross vehicle weight rating of 10,000 pounds or more. The ordinance or resolution relating to parking between the hours of 2 a.m. and 6 a.m. may provide for a system of permits for the purpose of exempting from the prohibition or restriction of the ordinance or resolution disabled persons, residents, and guests of residents of residential areas, including, but not limited to, high-density and multiple-family dwelling areas, lacking adequate offstreet parking facilities. The ordinance or resolution relating to the parking or standing of commercial vehicles, or trailer component thereof, in a residential district, however, shall not be effective with respect to any commercial vehicle making pickups or deliveries of goods, wares, and merchandise

from or to any building or structure located on the restricted streets or highways or for the purpose of delivering materials to be used in the actual and bona fide repair, alteration, remodeling, or construction of any building or structure upon the restricted streets or highways for which a building permit has previously been obtained.

(b) Subdivision (a) of this section is applicable to vehicles specified in subdivision (a) of Section 31303, except that an ordinance or resolution adopted pursuant to subdivision (a) of this section may not permit the parking of those vehicles which is otherwise prohibited under this code.

(c) For the purpose of implementing this section, each local authority may, by ordinance, define the term ''residential district'' in accordance with its zoning ordinance. The ordinance is not effective unless the legislative body of the local authority holds a public hearing on the proposed ordinance prior to its adoption, with notice of the public hearing given in accordance with Section 65090 of the Government Code.

SEC. 12. Section 22511.5 of the Vehicle Code is amended to read:

22511.5. (a) (1) A disabled person or disabled veteran displaying special license plates issued under Section 5007 or a distinguishing placard issued under Section 22511.55 or 22511.59 is allowed to park for unlimited periods in any of the following zones:

(A) In any restricted zone described in paragraph (5) of subdivision (a) of Section 21458 or on streets upon which preferential parking privileges and height limits have been given pursuant to Section 22507.

(B) In any parking zone that is restricted as to the length of time parking is permitted as indicated by a sign erected pursuant to a local ordinance.

(2) A disabled person or disabled veteran is allowed to park in any metered parking space without being required to pay parking meter fees.

(3) This subdivision does not apply to a zone for which state law or ordinance absolutely prohibits stopping, parking, or standing of all vehicles, or which the law or ordinance reserves for special types of vehicles, or to the parking of a vehicle that is involved in the operation of a street vending business.

(b) A disabled person or disabled veteran is allowed to park a vehicle displaying a special disabled person license plate or placard issued by a foreign jurisdiction with the same parking privileges authorized in this code for any vehicle displaying a special license plate or a distinguishing placard issued by the Department of Motor Vehicles.

SEC. 13. Section 22511.55 of the Vehicle Code is amended to read:

22511.55. (a) (1) A 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 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), a person is not 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 an original distinguishing placard to a disabled person or disabled veteran, 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 one hand, for a disabled veteran, or both hands, for a disabled person, 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, surgeon, chiropractor, or optometrist certifying the qualifying disability shall provide a full description of the illness or disability on the form submitted to the department.

(2) The physician, surgeon, chiropractor, or optometrist 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 or the appropriate regulatory board.

(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) A person who is issued a distinguishing placard pursuant to subdivision (a) may apply to the department for a substitute placard without recertification of eligibility, if that placard is 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. 14. Section 22511.57 of the Vehicle Code is amended to read:

22511.57. Local authorities may, by ordinance or resolution, prohibit or restrict the parking or standing of a vehicle on streets or highways or from a disabled person's parking stall or space of a privately or publicly owned or operated offstreet parking facility within their jurisdiction when the vehicle displays, in order to obtain special parking privileges, a distinguishing placard issued pursuant to Section 22511.55, and the record of the Department of Motor Vehicles for the identification number assigned to the placard indicates that the placard has been reported as lost, stolen, surrendered, cancelled, revoked, or expired, or

was issued to a person who has been reported as being deceased for a period exceeding 60 days.

SEC. 15. Section 22511.59 of the Vehicle Code is amended to read:

22511.59. (a) Upon receipt of the applications and documents required by subdivision (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, surgeon, chiropractor, or optometrist, 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, surgeon, chiropractor, or optometrist 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 or the appropriate regulatory board.

(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 permanently 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, surgeon, chiropractor, or optometrist 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 or the appropriate regulatory board.

(4) A placard issued pursuant to this subdivision shall expire not later than 90 days from the date of issuance.

(5) The department shall not charge a fee for issuance of a placard under this subdivision.

(d) (1) A permanently disabled person or disabled veteran who has been issued either a distinguishing placard pursuant to Section 22511.55 or special license plates pursuant to Section 5007, but not both, may apply to the department for the issuance of the temporary distinguishing placard described in subdivision (a) for the purpose of travel.

(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 license plates.

(3) A placard issued pursuant to this subdivision shall expire not later than 30 days from the date of issuance.

(4) The department shall not charge a fee for issuance of a placard under this subdivision.

(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. 16. Section 22511.8 of the Vehicle Code is amended to read:

22511.8. (a) Any local authority, by ordinance or resolution, and any person in lawful possession of an offstreet parking facility may designate stalls or spaces in an offstreet parking facility owned or operated by the local authority or person for the exclusive use of any vehicle which displays either a special license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59. The designation shall be made by posting a sign as described in paragraph (1), and by either of the markings described in paragraph (2) or (3):

(1) By posting immediately adjacent to, and visible from, each stall or space, a sign consisting of a profile view of a wheelchair with occupant in white on a blue background.

(2) By outlining or painting the stall or space in blue and outlining on the ground in the stall or space in white or suitable contrasting color a profile view depicting a wheelchair with occupant.

(3) By outlining a profile view of a wheelchair with occupant in white on a blue background, of the same dimensions as in paragraph (2). The profile view shall be located so that it is visible to a traffic enforcement officer when a vehicle is properly parked in the space.

(b) If posted in accordance with subdivision (d) or (e), the owner or person in lawful possession of a privately owned or operated offstreet parking facility, after notifying the police or sheriff's department, may cause the removal of a vehicle from a stall or space designated pursuant to subdivision (a) in the facility to the nearest public garage unless a special license plate issued pursuant to Section 5007 or distinguishing placard issued pursuant to Section 22511.55 or 22511.59 is displayed on the vehicle.

(c) If posted in accordance with subdivision (d), the local authority owning or operating an offstreet parking facility, after notifying the police or sheriff's department, may cause the removal of a vehicle from a stall or space designated pursuant to subdivision (a) in the facility to the nearest public garage unless a special license plate issued pursuant to Section 5007 or a distinguishing placard issued pursuant to Section 22511.55 or 22511.59 is displayed on the vehicle.

(d) Except as provided in Section 22511.9, the posting required for an offstreet parking facility owned or operated either privately or by a local authority shall consist of a sign not less than 17 by 22 inches in size with lettering not less than one inch in height which clearly and conspicuously states the following: ''Unauthorized vehicles not displaying distinguishing placards or special license plates issued for physically disabled persons will be towed away at the owner's expense. Towed vehicles may be reclaimed at

_____ or by telephoning
(Address)
_____."
(Telephone number of local law enforcement agency)

The sign shall be posted in either of the following locations:

(1) Immediately adjacent to, and visible from, the stall or space.

(2) In a conspicuous place at each entrance to the offstreet parking facility.

(e) If the parking facility is privately owned and public parking is prohibited by the posting of a sign meeting the requirements of paragraph (1) of subdivision (a) of Section 22658, the requirements of subdivision (b) may be met by the posting of a sign immediately adjacent to, and visible from, each stall or space indicating that a vehicle not meeting the requirements of subdivision (a) will be removed at the owner's expense and containing the telephone number of the local traffic law enforcement agency.

(f) This section does not restrict the privilege granted to disabled persons and disabled veterans by Section 22511.5.

SEC. 17. Section 22652 of the Vehicle Code is amended to read:

22652. (a) A peace officer, as defined in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, or any regularly employed and salaried employee engaged in directing traffic or enforcing parking laws and regulations of a city, county, or jurisdiction of a state agency may remove any vehicle from a stall or space designated for physically disabled persons pursuant to Section 22511.7 or 22511.8, located within the jurisdictional limits in which the officer or employee is authorized to act, if the vehicle is parked in violation of Section 22507.8 and if the police or sheriff's department or the Department of the California Highway Patrol is notified.

(b) In a privately or publicly owned or operated offstreet parking facility, this section applies only to those stalls and spaces if the posting requirements under subdivisions (a) and (d) of Section 22511.8 have been complied with and if the stalls or spaces are clearly signed or marked.

SEC. 18. Section 22658.2 of the Vehicle Code is amended to read:

22658.2. (a) Except as provided in subdivision (b), an ''association'', as defined in subdivision (a) of Section 1351 of the Civil Code, of a common interest development, as defined in subdivision (c) of Section 1351 of the Civil Code, may cause the removal of a vehicle parked on that property to the nearest public garage if all of the following requirements are satisfied:

(1) A sign not less than 17 by 22 inches in size with lettering not less than one inch in height appears at each entrance to the common interest development and contains both of the following:

(A) A statement that public parking is prohibited and all vehicles not authorized to park on the common interest development will be removed at the owner's expense.

(B) The telephone number of the local traffic law enforcement agency.

The sign may also indicate that a citation may be issued for the violation.

(2) If the identity of the registered owner of the vehicle is known or readily ascertainable, the president of the association or his or her designee shall, within a reasonable time, notify the owner of the removal by first-class mail. If the identity of the owner of the vehicle is not known or ascertainable, the president of the association or his or her designee shall comply with subdivision (c) of Section 22853.

(3) The president of the association or his or her designee, gives or causes to be given, notice of the removal to the local traffic law enforcement agency immediately after the vehicle has been removed. The notice shall include a description of the vehicle, the license plate number, and the address from where the vehicle was removed.

(b) The association may cause the removal without notice of any vehicle parked in a marked fire lane, within 15 feet of a fire hydrant, in a parking space designated for disabled persons without proper authority, or in a manner which interferes with any entrance to, or exit from, the common interest development or any separate interest contained therein.

(c) Notwithstanding Section 1708 of the Civil Code, the association is not liable for any damages incurred by the vehicle owner because of the removal of a vehicle in compliance with this section or for any damage to the vehicle caused by the removal. However, the owner of a vehicle removed pursuant to this section may recover for any damage to the vehicle which results from any intentional or negligent act of the association or any person causing the removal of, or removing, the vehicle.

(d) Notwithstanding any other provision of law, subdivisions (f) to (k), inclusive, of Section 22658 apply to the removal of vehicles pursuant to this section.

SEC. 19. Section 25276 of the Vehicle Code is amended to read:

25276. (a) A motor vehicle designed for carrying more than eight persons, including the driver, owned by a private, nonprofit organization that provides training or other activities for persons who are mentally retarded or physically disabled, or both, and that is certified by the Department of Rehabilitation or licensed by the State Department of Health, with respect to the providing of this training or other activities, may be equipped with a flashing amber light signal system.

(b) A motor vehicle, described in subdivision (a), may, while actually engaged in the transportation of persons described in subdivision (a) to or from a training or activity center operated by the organization, display the flashing amber lights of the system when necessarily parked upon a highway and in the process of loading or unloading persons.

(c) Subdivisions (a) and (b) apply to a motor vehicle that is rented, leased, or chartered by the organization.

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 405

An act to amend Section 912 of the Evidence Code, to amend Sections 3304 and 68115 of the Government Code, to amend Section 11100 of the Health and Safety Code, to amend Sections 266h, 266i, 290.01, 337j, 629.61, 666.7, 836, 1170.11, 1337, 1341, 1372, 1405, 4501, 11171, 13010, 13014, 13022, 13510.7, 13823.9, and 13879.81 of the Penal Code, and to amend Sections 285 and 15763 of the Welfare and Institutions Code, relating to public safety.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 912 of the Evidence Code is amended to read:

912. (a) Except as otherwise provided in this section, the right of any person to claim a privilege provided by Section 954 (lawyer-client privilege), 980 (privilege for confidential marital communications), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1033 (privilege of penitent), 1034 (privilege of clergyman), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic violence counselor-victim privilege) is waived with respect to a communication protected by the privilege if any holder of the privilege, without coercion, has disclosed a significant part of the communication or has consented to disclosure made by anyone. Consent to disclosure is manifested by any statement or other conduct of the holder of the privilege indicating consent to the disclosure, including failure to claim the privilege in any proceeding in which the holder has the legal standing and opportunity to claim the privilege.

(b) Where two or more persons are joint holders of a privilege provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic

violence counselor-victim privilege), a waiver of the right of a particular joint holder of the privilege to claim the privilege does not affect the right of another joint holder to claim the privilege. In the case of the privilege provided by Section 980 (privilege for confidential marital communications), a waiver of the right of one spouse to claim the privilege does not affect the right of the other spouse to claim the privilege.

(c) A disclosure that is itself privileged is not a waiver of any privilege.

(d) A disclosure in confidence of a communication that is protected by a privilege provided by Section 954 (lawyer-client privilege), 994 (physician-patient privilege), 1014 (psychotherapist-patient privilege), 1035.8 (sexual assault counselor-victim privilege), or 1037.5 (domestic violence counselor-victim privilege), when disclosure is reasonably necessary for the accomplishment of the purpose for which the lawyer, physician, psychotherapist, sexual assault counselor, or domestic violence counselor was consulted, is not a waiver of the privilege.

SEC. 2. Section 3304 of the Government Code is amended to read:

3304. (a) No public safety officer shall be subjected to punitive action, or denied promotion, or be threatened with any such treatment, because of the lawful exercise of the rights granted under this chapter, or the exercise of any rights under any existing administrative grievance procedure.

Nothing in this section shall preclude a head of an agency from ordering a public safety officer to cooperate with other agencies involved in criminal investigations. If an officer fails to comply with such an order, the agency may officially charge him or her with insubordination.

(b) No punitive action, nor denial of promotion on grounds other than merit, shall be undertaken by any public agency against any public safety officer who has successfully completed the probationary period that may be required by his or her employing agency without providing the public safety officer with an opportunity for administrative appeal.

(c) No chief of police may be removed by a public agency, or appointing authority, without providing the chief of police with written notice and the reason or reasons therefor and an opportunity for administrative appeal.

For purposes of this subdivision, the removal of a chief of police by a public agency or appointing authority, for the purpose of implementing the goals or policies, or both, of the public agency or appointing authority, for reasons including, but not limited to, incompatibility of management styles or as a result of a change in administration, shall be sufficient to constitute ‘‘reason or reasons.’’

Nothing in this subdivision shall be construed to create a property interest, where one does not exist by rule or law, in the job of Chief of Police.

(d) Except as provided in this subdivision and subdivision (g), no punitive action, nor denial of promotion on grounds other than merit, shall be undertaken for any act, omission, or other allegation of misconduct if the investigation of the allegation is not completed within one year of the public agency's discovery by a person authorized to initiate an investigation of the allegation of an act, omission, or other misconduct. This one-year limitation period shall apply only if the act, omission, or other misconduct occurred on or after January 1, 1998. In the event that the public agency determines that discipline may be taken, it shall complete its investigation and notify the public safety officer of its proposed disciplinary action within that year, except in any of the following circumstances:

(1) If the act, omission, or other allegation of misconduct is also the subject of a criminal investigation or criminal prosecution, the time during which the criminal investigation or criminal prosecution is pending shall toll the one-year time period.

(2) If the public safety officer waives the one-year time period in writing, the time period shall be tolled for the period of time specified in the written waiver.

(3) If the investigation is a multijurisdictional investigation that requires a reasonable extension for coordination of the involved agencies.

(4) If the investigation involves more than one employee and requires a reasonable extension.

(5) If the investigation involves an employee who is incapacitated or otherwise unavailable.

(6) If the investigation involves a matter in civil litigation where the public safety officer is named as a party defendant, the one-year time period shall be tolled while that civil action is pending.

(7) If the investigation involves a matter in criminal litigation where the complainant is a criminal defendant, the one-year time period shall be tolled during the period of that defendant's criminal investigation and prosecution.

(8) If the investigation involves an allegation of workers' compensation fraud on the part of the public safety officer.

(e) Where a predisciplinary response or grievance procedure is required or utilized, the time for this response or procedure shall not be governed or limited by this chapter.

(f) If, after investigation and any predisciplinary response or procedure, the public agency decides to impose discipline, the public agency shall notify the public safety officer in writing of its decision to

impose discipline, including the date that the discipline will be imposed, within 30 days of its decision, except if the public safety officer is unavailable for discipline.

(g) Notwithstanding the one-year time period specified in subdivision (d), an investigation may be reopened against a public safety officer if both of the following circumstances exist:

(1) Significant new evidence has been discovered that is likely to affect the outcome of the investigation.

(2) One of the following conditions exist:

(A) The evidence could not reasonably have been discovered in the normal course of investigation without resorting to extraordinary measures by the agency.

(B) The evidence resulted from the public safety officer's predisciplinary response or procedure.

(h) For those members listed in subdivision (a) of Section 830.2 of the Penal Code, the 30-day time period provided for in subdivision (f) shall not commence with the service of a preliminary notice of adverse action, should the public agency elect to provide the public safety officer with such a notice.

SEC. 3. Section 68115 of the Government Code is amended to read:

68115. When war, insurrection, pestilence, or other public calamity, or the danger thereof, or the destruction of or danger to the building appointed for holding the court, renders it necessary, or when a large influx of criminal cases resulting from a large number of arrests within a short period of time threatens the orderly operation of a superior court location or locations within a county, the presiding judge may request and the Chair of the Judicial Council may, notwithstanding any other provision of law, by order authorize the court to do one or more of the following:

(a) Hold sessions anywhere within the county.

(b) Transfer civil cases pending trial in the court to a superior court in an adjacent county. No transfer may be made pursuant to this subdivision except with the consent of all parties to the case or upon a showing by a party that extreme or undue hardship would result unless the case is transferred for trial. Any civil case so transferred shall be integrated into the existing caseload of the court to which it is transferred pursuant to rules to be provided by the Judicial Council.

(c) Declare that a date or dates on which an emergency condition, as described in this section, substantially interfered with the public's ability to file papers in a court facility or facilities be deemed a holiday for purposes of computing the time for filing papers with the court under Sections 12 and 12a of the Code of Civil Procedure. This subdivision shall apply to the fewest days necessary under the circumstances of the emergency, as determined by the Chair of the Judicial Council.

(d) Declare that a date on which an emergency condition, as described in this section, prevented the court from conducting proceedings governed by Section 825 of the Penal Code, or Section 313, 315, 631, 632, 637, or 657 of the Welfare and Institutions Code, be deemed a holiday for purposes of computing time under those statutes. This subdivision shall apply to the fewest days necessary under the circumstances of the emergency, as determined by the Chair of the Judicial Council.

(e) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Section 825 of the Penal Code within which a defendant charged with a felony offense shall be taken before a magistrate from 48 hours to not more than seven days, with the number of days to be designated by the Chair of the Judicial Council. This authorization shall be effective for 30 days unless it is extended by a new request and a new order.

(f) Extend the time period provided in Section 859b of the Penal Code for the holding of a preliminary examination from 10 court days to not more than 15 days.

(g) Extend the time period provided in Section 1382 of the Penal Code within which the trial must be held by not more than 30 days, but the trial of a defendant in custody whose time is so extended shall be given precedence over all other cases.

(h) Within the affected area of a county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Sections 313, 315, 632, and 637 of the Welfare and Institutions Code within which a minor shall be given a detention hearing, with the number of days to be designated by the Chair of the Judicial Council. The extension of time shall be for the shortest period of time necessary under the circumstances of the emergency, but in no event shall the time period within which a detention hearing must be given be extended to more than seven days. This authorization shall be effective for 30 days unless it is extended by a new request and a new order. This subdivision shall apply only where the minor has been charged with a felony.

(i) Within the affected county during a state of emergency resulting from a natural or human-made disaster proclaimed by the President of the United States or by the Governor pursuant to Section 8625 of the Government Code, extend the time period provided in Sections 334 and 657 of the Welfare and Institutions Code within which an adjudication on a juvenile court petition shall be held by not more than 15 days, with the number of days to be designated by the Chair of the Judicial Council.

This authorization shall be effective for 30 days unless it is extended by a new request and a new order. This subdivision shall apply only where the minor has been charged with a felony.

SEC. 4. Section 11100 of the Health and Safety Code is amended to read:

11100. (a) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes any of the following substances to any person or entity in this state or any other state shall submit a report to the Department of Justice of all of those transactions:

(1) Phenyl-2-propanone.
(2) Methylamine.
(3) Ethylamine.
(4) D-lysergic acid.
(5) Ergotamine tartrate.
(6) Diethyl malonate.
(7) Malonic acid.
(8) Ethyl malonate.
(9) Barbituric acid.
(10) Piperidine.
(11) N-acetylanthranilic acid.
(12) Pyrrolidine.
(13) Phenylacetic acid.
(14) Anthranilic acid.
(15) Morpholine.
(16) Ephedrine.
(17) Pseudoephedrine.
(18) Norpseudoephedrine.
(19) Phenylpropanolamine.
(20) Propionic anhydride.
(21) Isosafrole.
(22) Safrole.
(23) Piperonal.
(24) Thionylchloride.
(25) Benzyl cyanide.
(26) Ergonovine maleate.
(27) N-methylephedrine.
(28) N-ethylephedrine.
(29) N-methylpseudoephedrine.
(30) N-ethylpseudoephedrine.
(31) Chloroephedrine.
(32) Chloropseudoephedrine.
(33) Hydriodic acid.

(34) Gamma-butyrolactone, including butyrolactone; butyrolactone gamma; 4-butyrolactone; 2(3H)-furanone dihydro; dihydro-2(3H)-furanone; tetrahydro-2-furanone; 1,2-butanolide; 1,4-butanolide; 4-butanolide; gamma-hydroxybutyric acid lactone; 3-hydroxybutyric acid lactone and 4-hydroxybutanoic acid lactone with Chemical Abstract Service number (96-48-0).

(35) 1,4-butanediol, including butanediol; butane-1,4-diol; 1,4-butylene glycol; butylene glycol; 1,4-dihydroxybutane; 1,4-tetramethylene glycol; tetramethylene glycol; tetramethylene 1,4-diol with Chemical Abstract Service number (110-63-4).

(36) Red phosphorous, including white phosphorous, hypophosphorous acid and its salts, ammonium hypophosphite, calcium hypophosphite, iron hypophosphite, potassium hypophosphite, manganese hypophosphite, magnesium hypophosphite, and sodium hypophosphite.

(37) Any of the substances listed by the Department of Justice in regulations promulgated pursuant to subdivision (b).

(b) The Department of Justice may adopt rules and regulations in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code that add substances to subdivision (a) if the substance is a precursor to a controlled substance and delete substances from subdivision (a). However, no regulation adding or deleting a substance shall have any effect beyond March 1 of the year following the calendar year during which the regulation was adopted.

(c) (1) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state, prior to selling, transferring, or otherwise furnishing any substance specified in subdivision (a) to any person or business entity in this state or any other state, shall require (A) a letter of authorization from that person or business entity that includes the currently valid business license number or federal Drug Enforcement Administration (DEA) registration number, the address of the business, and a full description of how the substance is to be used, and (B) proper identification from the purchaser. The manufacturer, wholesaler, retailer, or other person or entity in this state shall retain this information in a readily available manner for three years. The requirement for a full description of how the substance is to be used does not require the person or business entity to reveal their chemical processes that are typically considered trade secrets and proprietary information.

(B) For the purposes of this paragraph, ''proper identification'' for in-state or out-of-state purchasers includes two or more of the following: federal tax identification number; seller's permit identification number; city or county business license number; license issued by the California Department of Health Services; registration number issued by the

Federal Drug Enforcement Administration; precursor business permit number issued by the Bureau of Narcotic Enforcement of the California Department of Justice; motor vehicle operator's license; or other identification issued by a state.

(2) (A) Any manufacturer, wholesaler, retailer, or other person or entity in this state that exports a substance specified in subdivision (a) to any person or business entity located in a foreign country shall, on or before the date of exportation, submit to the Department of Justice a notification of that transaction, which notification shall include the name and quantity of the substance to be exported and the name, address, and, if assigned by the foreign country or subdivision thereof, business identification number of the person or business entity located in a foreign country importing the substance.

(B) The department may authorize the submission of the notification on a monthly basis with respect to repeated, regular transactions between an exporter and an importer involving a substance specified in subdivision (a), if the department determines that a pattern of regular supply of the substance exists between the exporter and importer and that the importer has established a record of utilization of the substance for lawful purposes.

(d) (1) Any manufacturer, wholesaler, retailer, or other person or entity in this state that sells, transfers, or otherwise furnishes a substance specified in subdivision (a) to a person or business entity in this state or any other state shall, not less than 21 days prior to delivery of the substance, submit a report of the transaction, which includes the identification information specified in subdivision (c), to the Department of Justice. The Department of Justice may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the substance or substances if the Department of Justice determines that a pattern of regular supply of the substance or substances exists between the manufacturer, wholesaler, retailer, or other person or entity that sells, transfers, or otherwise furnishes the substance or substances and the recipient of the substance or substances, and the recipient has established a record of utilization of the substance or substances for lawful purposes.

(2) The person selling, transferring, or otherwise furnishing any substance specified in subdivision (a) shall affix his or her signature or otherwise identify himself or herself as a witness to the identification of the purchaser or purchasing individual, and shall, if a common carrier is used, maintain a manifest of the delivery to the purchaser for three years.

(e) This section shall not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a physician, dentist, podiatrist, or veterinarian.

(2) Any physician, dentist, podiatrist, or veterinarian who administers or furnishes a substance to his or her patients.

(3) Any manufacturer or wholesaler licensed by the California State Board of Pharmacy that sells, transfers, or otherwise furnishes a substance to a licensed pharmacy, physician, dentist, podiatrist, veterinarian, or retail distributor as defined in subdivision (h), provided that the manufacturer or wholesaler submits records of any suspicious sales or transfers as determined by the Department of Justice.

(4) Any analytical research facility that is registered with the federal Drug Enforcement Administration of the United States Department of Justice.

(5) (A) Any sale, transfer, furnishing, or receipt of any product that contains ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine and which is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.) or regulations adopted thereunder. However, this section shall apply to preparations in solid or liquid dosage form, except pediatric liquid forms, as defined, containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine where the individual transaction involves more than three packages or nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

(B) Any ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine product subsequently removed from exemption pursuant to Section 814 of Title 21 of the United States Code shall similarly no longer be exempt from any state reporting or permitting requirement, unless otherwise reinstated pursuant to subdivision (d) or (e) of Section 814 of Title 21 of the United States Code as an exempt product.

(6) Any transfer of a substance specified in subdivision (a) for purposes of lawful disposal as waste.

(f) (1) Any person specified in subdivision (a) or (d) who does not submit a report as required by that subdivision or who knowingly submits a report with false or fictitious information shall be punished by imprisonment in a county jail not exceeding six months, by a fine not exceeding five thousand dollars ($5,000), or by both the fine and imprisonment.

(2) Any person specified in subdivision (a) or (d) who has previously been convicted of a violation of paragraph (1) shall, upon a subsequent conviction thereof, be punished by imprisonment in the state prison, or by imprisonment in a county jail not exceeding one year, by a fine not exceeding one hundred thousand dollars ($100,000), or by both the fine and imprisonment.

(g) (1) Except as otherwise provided in subparagraph (A) of paragraph (5) of subdivision (e), it is unlawful for any manufacturer, wholesaler, retailer, or other person to sell, transfer, or otherwise furnish a substance specified in subdivision (a) to a person under 18 years of age.

(2) Except as otherwise provided in subparagraph (A) of paragraph (5) of subdivision (e), it is unlawful for any person under 18 years of age to possess a substance specified in subdivision (a).

(3) Notwithstanding any other law, it is unlawful for any retail distributor to (i) sell in a single transaction more than three packages of a product that he or she knows to contain ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, or (ii) knowingly sell more than nine grams of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine, other than pediatric liquids as defined. Except as otherwise provided in this section, the three package per transaction limitation or nine gram per transaction limitation imposed by this paragraph shall apply to any product that is lawfully sold, transferred, or furnished over the counter without a prescription pursuant to the federal Food, Drug, and Cosmetic Act (21 U.S.C. Sec. 301 et seq.), or regulations adopted thereunder, unless exempted from the requirements of the federal Controlled Substances Act by the federal Drug Enforcement Administration pursuant to Section 814 of Title 21 of the United States Code.

(4) (A) A first violation of this subdivision is a misdemeanor.

(B) Any person who has previously been convicted of a violation of this subdivision shall, upon a subsequent conviction thereof, be punished by imprisonment in a county jail not exceeding one year, by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(h) For the purposes of this article, the following terms have the following meanings:

(1) ''Drug store'' is any entity described in Code 5912 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(2) ''General merchandise store'' is any entity described in Codes 5311 to 5399, inclusive, and Code 5499 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(3) ''Grocery store'' is any entity described in Code 5411 of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition.

(4) ''Pediatric liquid'' means a nonencapsulated liquid whose unit measure according to product labeling is stated in milligrams, ounces, or other similar measure. In no instance shall the dosage units exceed 15 milligrams of phenylpropanolamine or pseudoephedrine per five

milliliters of liquid product, except for liquid products primarily intended for administration to children under two years of age for which the recommended dosage unit does not exceed two milliliters and the total package content does not exceed one fluid ounce.

(5) ''Retail distributor'' means a grocery store, general merchandise store, drugstore, or other related entity, the activities of which, as a distributor of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products, are limited exclusively to the sale of ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine products for personal use both in number of sales and volume of sales, either directly to walk-in customers or in face-to-face transactions by direct sales. ''Retail distributor'' includes an entity that makes a direct sale, but does not include the parent company of that entity if the company is not involved in direct sales regulated by this article.

(6) ''Sale for personal use'' means the sale in a single transaction to an individual customer for a legitimate medical use of a product containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine in dosages at or below that specified in paragraph (3) of subdivision (g). ''Sale for personal use'' also includes the sale of those products to employers to be dispensed to employees from first-aid kits or medicine chests.

(i) It is the intent of the Legislature that this section shall preempt all local ordinances or regulations governing the sale by a retail distributor of over-the-counter products containing ephedrine, pseudoephedrine, norpseudoephedrine, or phenylpropanolamine.

SEC. 5. Section 266h of the Penal Code is amended to read:

266h. (a) Except as provided in subdivision (b), any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, is guilty of pimping, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years.

(b) Any person who, knowing another person is a prostitute, lives or derives support or maintenance in whole or in part from the earnings or proceeds of the person's prostitution, or from money loaned or advanced to or charged against that person by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or who solicits or receives compensation for soliciting for the person, when the prostitute is a minor, is guilty of pimping a minor, a felony, and shall be punishable as follows:

(1) If the person engaged in prostitution is a minor over the age of 16 years, the offense is punishable by imprisonment in the state prison for three, four, or six years.

(2) If the person engaged in prostitution is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.

SEC. 6. Section 266i of the Penal Code is amended to read:

266i. (a) Except as provided in subdivision (b), any person who does any of the following is guilty of pandering, a felony, and shall be punishable by imprisonment in the state prison for three, four, or six years:

(1) Procures another person for the purpose of prostitution.

(2) By promises, threats, violence, or by any device or scheme, causes, induces, persuades or encourages another person to become a prostitute.

(3) Procures for another person a place as an inmate in a house of prostitution or as an inmate of any place in which prostitution is encouraged or allowed within this state.

(4) By promises, threats, violence or by any device or scheme, causes, induces, persuades or encourages an inmate of a house of prostitution, or any other place in which prostitution is encouraged or allowed, to remain therein as an inmate.

(5) By fraud or artifice, or by duress of person or goods, or by abuse of any position of confidence or authority, procures another person for the purpose of prostitution, or to enter any place in which prostitution is encouraged or allowed within this state, or to come into this state or leave this state for the purpose of prostitution.

(6) Receives or gives, or agrees to receive or give, any money or thing of value for procuring, or attempting to procure, another person for the purpose of prostitution, or to come into this state or leave this state for the purpose of prostitution.

(b) Any person who does any of the acts described in subdivision (a) with another person who is a minor is guilty of pandering, a felony, and shall be punishable as follows:

(1) If the other person is a minor over the age of 16 years, the offense is punishable by imprisonment in the state prison for three, four, or six years.

(2) If the other person is under 16 years of age, the offense is punishable by imprisonment in the state prison for three, six, or eight years.

SEC. 7. 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 (a) and (b) of Section 290.45 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. 8. Section 337j of the Penal Code is amended to read:

337j. (a) It is unlawful for any person, as owner, lessee, or employee, whether for hire or not, either solely or in conjunction with others, to do any of the following without having first procured and thereafter maintained in effect all federal, state, and local licenses required by law:

(1) To deal, operate, carry on, conduct, maintain, or expose for play in this state any controlled game.

(2) To receive, directly or indirectly, any compensation or reward or any percentage or share of the revenue, for keeping, running, or carrying on any controlled game.

(3) To manufacture, distribute, or repair any gambling equipment within the boundaries of this state, or to receive, directly or indirectly, any compensation or reward for the manufacture, distribution, or repair of any gambling equipment within the boundaries of this state.

(b) It is unlawful for any person to knowingly permit any controlled game to be conducted, operated, dealt, or carried on in any house or building or other premises that he or she owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.

(c) It is unlawful for any person to knowingly permit any gambling equipment to be manufactured, stored, or repaired in any house or building or other premises that the person owns or leases, in whole or in part, if that activity is undertaken by a person who is not licensed as required by state law, or by an employee of that person.

(d) Any person who violates, attempts to violate, or conspires to violate this section shall be punished by imprisonment in a county jail for not more than one year, or by a fine of not more than five thousand dollars ($5,000), or by both that imprisonment and fine.

(e) (1) As used in this section, ''controlled game'' means any poker or Pai Gow game, and any other game played with cards or tiles, or both, and approved by the Division of Gambling Control, and any game of chance, including any gambling device, played for currency, check,

credit, or any other thing of value that is not prohibited and made unlawful by statute or local ordinance.

(2) As used in this section, ''controlled game'' does not include any of the following:

(A) The game of bingo conducted pursuant to Section 326.5.

(B) Parimutuel racing on horse races regulated by the California Horse Racing Board.

(C) Any lottery game conducted by the California State Lottery.

(D) Games played with cards in private homes or residences, in which no person makes money for operating the game, except as a player.

(f) This subdivision is intended to be dispositive of the law relating to the collection of player fees in gambling establishments. A fee may not be calculated as a fraction or percentage of wagers made or winnings earned. The amount of fees charged for all wagers shall be determined prior to the start of play of any hand or round. However, the gambling establishment may waive collection of the fee or portion of the fee in any hand or round of play after the hand or round has begun pursuant to the published rules of the game and the notice provided to the public. The actual collection of the fee may occur before or after the start of play. Ample notice shall be provided to the patrons of gambling establishments relating to the assessment of fees. Flat fees on each wager may be assessed at different collection rates, but no more than three collection rates may be established per table. However, if the gambling establishment waives its collection fee, this fee does not constitute one of the three collection rates.

SEC. 9. Section 629.61 of the Penal Code is amended to read:

629.61. (a) Whenever an order authorizing an interception is entered, the order shall require a report in writing or otherwise to be made to the Attorney General showing what persons, facilities, places, or any combination of these are to be intercepted pursuant to the application, and the action taken by the judge on each of those applications. The report shall be made at the interval that the order may require, but not more than 10 days after the order was issued, and shall be made by any reasonable and reliable means, as determined by the Attorney General.

(b) The Attorney General may issue regulations prescribing the collection and dissemination of information collected pursuant to this chapter.

(c) The Attorney General shall, upon the request of an individual making an application for an interception order pursuant to this chapter, provide any information known as a result of these reporting requirements and in compliance with paragraph (6) of subdivision (a) of Section 629.50.

SEC. 10. 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) 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.).

(22) 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 (subd. (a), 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) 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.).

(5) 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.).

(6) 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 five years' imprisonment in the state prison may be referenced as Schedule M.

(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. (b), Sec. 290.4, and para. (1), subd. (e), Sec. 290.45, 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 (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.).

(n) 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 N.

(1) Commission or attempted commission of a felony while personally using an assault weapon or a machinegun (subd. (b), Sec. 12022.5, Pen. C.).

(2) 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.).

(o) The provisions listed in this subdivision imposing a sentence enhancement of seven years' imprisonment in the state prison may be referenced as Schedule O.

(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.).

(p) The provisions listed in this subdivision imposing a sentence enhancement of nine years' imprisonment in the state prison may be referenced as Schedule P.

(1) Kidnapping a victim for the purpose of committing any specified felony sex offense (subd. (a), Sec. 667.8, Pen. C.).

(q) The provisions listed in this subdivision imposing a sentence enhancement of 10 years' imprisonment in the state prison may be referenced as Schedule Q.

(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.).

(r) The provisions listed in this subdivision imposing a sentence enhancement of 15 years' imprisonment in the state prison may be referenced as Schedule R.

(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.).

(s) The provisions listed in this subdivision imposing a sentence enhancement of 20 years' imprisonment in the state prison may be referenced as Schedule S.

(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.).

(t) The provisions listed in this subdivision imposing a sentence enhancement of 25 years' imprisonment in the state prison may be referenced as Schedule T.

(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.).

(u) 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 U.

(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. 11. 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. 12. Section 1170.11 of the Penal Code is amended to read:

1170.11. As used in Section 1170.1, the term ''specific enhancement'' means an enhancement that relates to the circumstances of the crime. It includes, but is not limited to, the enhancements provided in Sections 186.10, 186.11, 186.22, 186.26, 186.33, 273.4, 289.5, 290.4, 290.45, 347, and 368, subdivisions (a), (b), and (c) of Section 422.75, paragraphs (2), (3), (4), and (5) of subdivision (a) of Section 451.1, paragraphs (2), (3), and (4) of subdivision (a) of Section 452.1, subdivision (g) of Section 550, Sections 593a, 600, 667.8, 667.85, 667.9, 667.10, 667.15, 667.16, 667.17, 674, 12021.5, 12022, 12022.2, 12022.3, 12022.4, 12022.5, 12022.53, 12022.55, 12022.6, 12022.7, 12022.75, 12022.8, 12022.85, 12022.9, 12022.95, 12072, and 12280 of this code, and in Sections 1522.01 and 11353.1, subdivision (b) of Section 11353.4, Sections 11353.6, 11356.5, 11370.4, 11379.7, 11379.8, 11379.9, 11380.1, 25189.5, and 25189.7 of the Health and Safety Code, and in Sections 20001 and 23558 of the Vehicle Code, and in Sections 10980 and 14107 of the Welfare and Institutions Code.

SEC. 13. Section 1337 of the Penal Code is amended to read:

1337. The application shall be made upon affidavit stating all of the following:

(1) The nature of the offense charged.

(2) The state of the proceedings in the action.

(3) The name and residence of the witness, and that his or her testimony is material to the defense or the prosecution of the action.

(4) That the witness is about to leave the state, or is so sick or infirm as to afford reasonable grounds for apprehending that he or she will not be able to attend the trial, or is a person 70 years of age or older, or a dependent adult, or that the life of the witness is in jeopardy.

SEC. 14. Section 1341 of the Penal Code is amended to read:

1341. If, at the time and place so designated, it is shown to the satisfaction of the magistrate that the witness is not about to leave the state, or is not sick or infirm, or is not a person 70 years of age or older,

or a dependent adult, or that the life of the witness is not in jeopardy, or that the application was made to avoid the examination of the witness on the trial, the examination cannot take place.

SEC. 15. Section 1372 of the Penal Code is amended to read:

1372. (a) (1) If the medical director of the state hospital or other facility to which the defendant is committed, or the community program director, county mental health director, or regional center director providing outpatient services, determines that the defendant has regained mental competence, the director shall immediately certify that fact to the court by filing a certificate of restoration with the court by certified mail, return receipt requested. For purposes of this section, the date of filing shall be the date on the return receipt.

(2) The court's order committing an individual to a state hospital or other treatment facility pursuant to Section 1370 shall include direction that the sheriff shall redeliver the patient to the court without any further order from the court upon receiving from the state hospital or treatment facility a copy of the certificate of restoration.

(3) The defendant shall be returned to the committing court in the following manner:

(A) A patient who remains confined in a state hospital or other treatment facility shall be redelivered to the sheriff of the county from which the patient was committed. The sheriff shall immediately return the person from the state hospital or other treatment facility to the court for further proceedings.

(B) The patient who is on outpatient status shall be returned by the sheriff to court through arrangements made by the outpatient treatment supervisor.

(C) In all cases, the patient shall be returned to the committing court no later than 10 days following the filing of a certificate of restoration. The state shall only pay for 10 hospital days for patients following the filing of a certificate of restoration of competency. The State Department of Mental Health shall report to the fiscal and appropriate policy committees of the Legislature on an annual basis in February, on the number of days that exceed the 10-day limit prescribed in this subparagraph. This report shall include, but not be limited to, a data sheet that itemizes by county the number of days that exceed this 10-day limit during the preceding year.

(b) If the defendant becomes mentally competent after a conservatorship has been established pursuant to the applicable provisions of the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code, and Section 1370, the conservator shall certify that fact to the sheriff and district attorney of the county in which the defendant's case is pending, defendant's attorney of record, and the committing court.

(c) When a defendant is returned to court with a certification that competence has been regained, the court shall notify either the community program director, the county mental health director, or the regional center director and the Director of Developmental Services, as appropriate, of the date of any hearing on the defendant's competence and whether or not the defendant was found by the court to have recovered competence.

(d) If the committing court approves the certificate of restoration to competence as to a person in custody, the court shall hold a hearing to determine whether the person is entitled to be admitted to bail or released on own recognizance status pending conclusion of the proceedings. If the superior court approves the certificate of restoration to competence regarding a person on outpatient status, unless it appears that the person has refused to come to court, that person shall remain released either on own recognizance status, or, in the case of a developmentally disabled person, either on the defendant's promise or on the promise of a responsible adult to secure the person's appearance in court for further proceedings. If the person has refused to come to court, the court shall set bail and may place the person in custody until bail is posted.

(e) A defendant subject to either subdivision (a) or (b) who is not admitted to bail or released under subdivision (d) may, at the discretion of the court, upon recommendation of the director of the facility where the defendant is receiving treatment, be returned to the hospital or facility of his or her original commitment or other appropriate secure facility approved by the community program director, the county mental health director, or the regional center director. The recommendation submitted to the court shall be based on the opinion that the person will need continued treatment in a hospital or treatment facility in order to maintain competence to stand trial or that placing the person in a jail environment would create a substantial risk that the person would again become incompetent to stand trial before criminal proceedings could be resumed.

(f) Notwithstanding subdivision (e), if a defendant is returned by the court to a hospital or other facility for the purpose of maintaining competency to stand trial and that defendant is already under civil commitment to that hospital or facility from another county pursuant to the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code) or as a developmentally disabled person committed pursuant to Article 2 (commencing with Section 6500) of Chapter 2 of Part 2 of Division 6 of the Welfare and Institutions Code, the costs of housing and treating the defendant in that facility following return pursuant to subdivision (e) shall be the responsibility of the original county of civil commitment.

SEC. 16. Section 1405 of the Penal Code is amended to read:

1405. (a) A person who was convicted of a felony and is currently serving a term of imprisonment may make a written motion before the trial court that entered the judgment of conviction in his or her case, for performance of forensic deoxyribonucleic acid (DNA) testing.

(b) (1) An indigent convicted person may request appointment of counsel to prepare a motion under this section by sending a written request to the court. The request shall include the person's statement that he or she was not the perpetrator of the crime and that DNA testing is relevant to his or her assertion of innocence. The request also shall include the person's statement as to whether he or she previously has had counsel appointed under this section.

(2) If any of the information required in paragraph (1) is missing from the request, the court shall return the request to the convicted person and advise him or her that the matter cannot be considered without the missing information.

(3) (A) Upon a finding that the person is indigent, he or she has included the information required in paragraph (1), and counsel has not previously been appointed pursuant to this subdivision, the court shall appoint counsel to investigate and, if appropriate, to file a motion for DNA testing under this section and to represent the person solely for the purpose of obtaining DNA testing under this section.

(B) Upon a finding that the person is indigent, and counsel previously has been appointed pursuant to this subdivision, the court may, in its discretion, appoint counsel to investigate and, if appropriate, to file a motion for DNA testing under this section and to represent the person solely for the purpose of obtaining DNA testing under this section.

(4) Nothing in this section shall be construed to provide for a right to the appointment of counsel in a postconviction collateral proceeding, or to set a precedent for any such right, in any context other than the representation being provided an indigent convicted person for the limited purpose of filing and litigating a motion for DNA testing pursuant to this section.

(c) (1) The motion shall be verified by the convicted person under penalty of perjury and shall do all of the following:

(A) Explain why the identity of the perpetrator was, or should have been, a significant issue in the case.

(B) Explain, in light of all the evidence, how the requested DNA testing would raise a reasonable probability that the convicted person's verdict or sentence would be more favorable if the results of DNA testing had been available at the time of conviction.

(C) Make every reasonable attempt to identify both the evidence that should be tested and the specific type of DNA testing sought.

(D) Reveal the results of any DNA or other biological testing that was conducted previously by either the prosecution or defense, if known.

(E) State whether any motion for testing under this section previously has been filed and the results of that motion, if known.

(2) Notice of the motion shall be served on the Attorney General, the district attorney in the county of conviction, and, if known, the governmental agency or laboratory holding the evidence sought to be tested. Responses, if any, shall be filed within 60 days of the date on which the Attorney General and the district attorney are served with the motion, unless a continuance is granted for good cause.

(d) If the court finds evidence was subjected to DNA or other forensic testing previously by either the prosecution or defense, it shall order the party at whose request the testing was conducted to provide all parties and the court with access to the laboratory reports, underlying data, and laboratory notes prepared in connection with the DNA or other biological evidence testing.

(e) The court, in its discretion, may order a hearing on the motion. The motion shall be heard by the judge who conducted the trial, or accepted the convicted person's plea of guilty or nolo contendre, unless the presiding judge determines that judge is unavailable. Upon request of either party, the court may order, in the interest of justice, that the convicted person be present at the hearing of the motion.

(f) The court shall grant the motion for DNA testing if it determines all of the following have been established:

(1) The evidence to be tested is available and in a condition that would permit the DNA testing requested in the motion.

(2) The evidence to be tested has been subject to a chain of custody sufficient to establish it has not been substituted, tampered with, replaced or altered in any material aspect.

(3) The identity of the perpetrator of the crime was, or should have been, a significant issue in the case.

(4) The convicted person has made a prima facie showing that the evidence sought to be tested is material to the issue of the convicted person's identity as the perpetrator of, or accomplice to, the crime, special circumstance, or enhancement allegation that resulted in the conviction or sentence.

(5) The requested DNA testing results would raise a reasonable probability that, in light of all the evidence, the convicted person's verdict or sentence would have been more favorable if the results of DNA testing had been available at the time of conviction. The court in its discretion may consider any evidence whether or not it was introduced at trial.

(6) The evidence sought to be tested meets either of the following conditions:

(A) The evidence was not tested previously.

(B) The evidence was tested previously, but the requested DNA test would provide results that are reasonably more discriminating and probative of the identity of the perpetrator or accomplice or have a reasonable probability of contradicting prior test results.

(7) The testing requested employs a method generally accepted within the relevant scientific community.

(8) The motion is not made solely for the purpose of delay.

(g) (1) If the court grants the motion for DNA testing, the court order shall identify the specific evidence to be tested and the DNA technology to be used.

(2) The testing shall be conducted by a laboratory mutually agreed upon by the district attorney in a noncapital case, or the Attorney General in a capital case, and the person filing the motion. If the parties cannot agree, the court shall designate the laboratory to conduct the testing and shall consider designating a laboratory accredited by the American Society of Crime Laboratory Directors Laboratory Accreditation Board (ASCLD/LAB).

(h) The result of any testing ordered under this section shall be fully disclosed to the person filing the motion, the district attorney, and the Attorney General. If requested by any party, the court shall order production of the underlying laboratory data and notes.

(i) (1) The cost of DNA testing ordered under this section shall be borne by the state or the applicant, as the court may order in the interests of justice, if it is shown that the applicant is not indigent and possesses the ability to pay. However, the cost of any additional testing to be conducted by the district attorney or Attorney General shall not be borne by the convicted person.

(2) In order to pay the state's share of any testing costs, the laboratory designated in subdivision (g) shall present its bill for services to the superior court for approval and payment. It is the intent of the Legislature to appropriate funds for this purpose in the 2000–01 Budget Act.

(j) An order granting or denying a motion for DNA testing under this section shall not be appealable, and shall be subject to review only through petition for writ of mandate or prohibition filed by the person seeking DNA testing, the district attorney, or the Attorney General. The petition shall be filed within 20 days after the court's order granting or denying the motion for DNA testing. In a noncapital case, the petition for writ of mandate or prohibition shall be filed in the court of appeal. In a capital case, the petition shall be filed in the California Supreme Court. The court of appeal or California Supreme Court shall expedite its review of a petition for writ of mandate or prohibition filed under this subdivision.

(k) DNA testing ordered by the court pursuant to this section shall be done as soon as practicable. However, if the court finds that a miscarriage

of justice will otherwise occur and that it is necessary in the interests of justice to give priority to the DNA testing, a DNA laboratory shall be required to give priority to the DNA testing ordered pursuant to this section over the laboratory's other pending casework.

(*l*) DNA profile information from biological samples taken from a convicted person pursuant to a motion for postconviction DNA testing is exempt from any law requiring disclosure of information to the public.

(m) Notwithstanding any other provision of law, the right to file a motion for postconviction DNA testing provided by this section is absolute and shall not be waived. This prohibition applies to, but is not limited to, a waiver that is given as part of an agreement resulting in a plea of guilty or nolo contendre.

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

SEC. 17. Section 4501 of the Penal Code is amended to read:

4501. Except as provided in Section 4500, every person confined in a state prison of this state who commits an assault upon the person of another with a deadly weapon or instrument, or by any means of force likely to produce great bodily injury, shall be guilty of a felony and shall be imprisoned in the state prison for two, four, or six years to be served consecutively.

SEC. 18. Section 11171 of the Penal Code is amended to read:

11171. (a) (1) The Legislature hereby finds and declares that adequate protection of victims of child physical abuse or neglect has been hampered by the lack of consistent and comprehensive medical examinations.

(2) Enhancing examination procedures, documentation, and evidence collection relating to child abuse or neglect will improve the investigation and prosecution of child abuse or neglect as well as other child protection efforts.

(b) The agency or agencies designated by the Director of Finance pursuant to Section 13820 shall, in cooperation with the State Department of Social Services, the Department of Justice, the California Association of Crime Lab Directors, the California District Attorneys Association, the California State Sheriffs Association, the California Peace Officers Association, the California Medical Association, the California Police Chiefs' Association, child advocates, the California Medical Training Center, child protective services, and other appropriate experts, establish medical forensic forms, instructions, and examination protocols for victims of child physical abuse or neglect using as a model the form and guidelines developed pursuant to Section 13823.5.

(c) The forms shall include, but not be limited to, a place for notation concerning each of the following:

(1) Any notification of injuries or any report of suspected child physical abuse or neglect to law enforcement authorities or children's protective services, in accordance with existing reporting procedures.

(2) Addressing relevant consent issues, if indicated.

(3) The taking of a patient history of child physical abuse or neglect that includes other relevant medical history.

(4) The performance of a physical examination for evidence of child physical abuse or neglect.

(5) The collection or documentation of any physical evidence of child physical abuse or neglect, including any recommended photographic procedures.

(6) The collection of other medical or forensic specimens, including drug ingestion or toxication, as indicated.

(7) Procedures for the preservation and disposition of evidence.

(8) Complete documentation of medical forensic exam findings with recommendations for diagnostic studies, including blood tests and X-rays.

(9) An assessment as to whether there are findings that indicate physical abuse or neglect.

(d) The forms shall become part of the patient's medical record pursuant to guidelines established by the advisory committee of the agency or agencies designated by the Director of Finance pursuant to Section 13820 and subject to the confidentiality laws pertaining to the release of a medical forensic examination records.

(e) The forms shall be made accessible for use on the Internet.

SEC. 19. Section 13010 of the Penal Code is amended to read:

13010. It shall be the duty of the department:

(a) To collect data necessary for the work of the department from all persons and agencies mentioned in Section 13020 and from any other appropriate source.

(b) To prepare and distribute to all those persons and agencies, cards, forms, or electronic means used in reporting data to the department. The cards, forms, or electronic means may, in addition to other items, include items of information needed by federal bureaus or departments engaged in the development of national and uniform criminal statistics.

(c) To recommend the form and content of records which must be kept by those persons and agencies in order to insure the correct reporting of data to the department.

(d) To instruct those persons and agencies in the installation, maintenance, and use of those records and in the reporting of data therefrom to the department.

(e) To process, tabulate, analyze and interpret the data collected from those persons and agencies.

(f) To supply, at their request, to federal bureaus or departments engaged in the collection of national criminal statistics data they need from this state.

(g) To present to the Governor, on or before July 1st, a printed annual report containing the criminal statistics of the preceding calendar year and to present at other times as the Attorney General may approve reports on special aspects of criminal statistics. A sufficient number of copies of all reports shall be printed or otherwise prepared to enable the Attorney General to send a copy to all public officials in the state dealing with criminals and to distribute them generally in channels where they will add to the public enlightenment.

(h) To periodically review the requirements of units of government using criminal justice statistics, and to make recommendations for changes it deems necessary in the design of criminal justice statistics systems, including new techniques of collection and processing made possible by automation.

SEC. 20. Section 13014 of the Penal Code is amended to read:

13014. (a) The Department of Justice shall perform the following duties concerning the investigation and prosecution of homicide cases:

(1) Collect information, as specified in subdivision (b), on all persons who are the victims of, and all persons who are charged with, homicide.

(2) Adopt and distribute as a written form or by electronic means to all state and governmental entities that are responsible for the investigation and prosecution of homicide cases forms that will include information to be provided to the department pursuant to subdivision (b).

(3) Compile, collate, index, and maintain a file of the information required by subdivision (b). The file shall be available to the general public during the normal business hours of the department, and the department shall annually publish a report containing the information required by this section, which shall also be available to the general public.

The department shall perform the duties specified in this subdivision within its existing budget.

(b) Every state or local governmental entity responsible for the investigation and prosecution of a homicide case shall provide the department with demographic information about the victim and the person or persons charged with the crime, including age, gender, race, and ethnic background.

SEC. 21. Section 13022 of the Penal Code is amended to read:

13022. Each sheriff and chief of police shall annually furnish the Department of Justice, in the manner prescribed by the Attorney

General, a report of all justifiable homicides committed in his or her jurisdiction. In cases where both a sheriff and chief of police would be required to report a justifiable homicide under this section, only the chief of police shall report the homicide.

SEC. 22. Section 13510.7 of the Penal Code is amended to read:

13510.7. (a) Whenever any person holding a certificate issued pursuant to Section 13510.1 is determined to be disqualified from holding office or being employed as a peace officer for the reasons set forth in subdivision (a) of Section 1029 of the Government Code, and the person has exhausted or waived his or her appeal, pursuant to Section 1237 or Section 1237.5, from the conviction or finding that forms the basis for or accompanies his or her disqualification, the commission shall cause the following to be entered in the commission's training record for that person: ''THIS PERSON IS INELIGIBLE TO BE A PEACE OFFICER IN CALIFORNIA PURSUANT TO GOVERNMENT CODE SECTION 1029(a).''

(b) Whenever any person who is required to possess a basic certificate issued by the commission pursuant to Section 832.4 or who is subject to subdivision (a) of Section 13510.1 is determined to be disqualified from holding office or being employed as a peace officer for the reasons set forth in subdivision (a) of Section 1029 of the Government Code, the commission shall notify the law enforcement agency that employs the person that the person is ineligible to be a peace officer in California pursuant to subdivision (a) of Section 1029 of the Government Code. The person's basic certificate shall be null and void and the commission shall enter this information in the commission's training record for that person.

(c) After the time for filing a notice of appeal has passed, or where the remittitur has been issued following the filing of a notice of appeal, in a criminal case establishing the ineligibility of a person to be a peace officer as specified in subdivision (c), the commission shall reinstate a person's basic certificate in the event a conviction of the offense requiring or accompanying ineligibility is subsequently overturned or reversed by the action of a court of competent jurisdiction.

(d) Upon request of a person who is eligible for reinstatement pursuant to paragraph (2) of subdivision (b) of Section 1029 of the Government Code because of successful completion of probation pursuant to Section 1210.1 of the Penal Code, the court having jurisdiction over the matter in which probation was ordered pursuant to Section 1210.1 shall notify the commission of the successful completion and the misdemeanor nature of the person's conviction. The commission shall thereupon reinstate the person's eligibility. Reinstatement of eligibility in the person's training record shall not create a mandate that the person be hired by any agency.

SEC. 23. Section 13823.9 of the Penal Code is amended to read:

13823.9. (a) Every public or private general acute care hospital that examines a victim of sexual assault or attempted sexual assault, including child molestation, shall comply with the standards specified in Section 13823.11 and the protocol and guidelines adopted pursuant to Section 13823.5.

(b) Each county with a population of more than 100,000 shall arrange that professional personnel trained in the examination of victims of sexual assault, including child molestation, shall be present or on call either in the county hospital which provides emergency medical services or in any general acute care hospital which has contracted with the county to provide emergency medical services. In counties with a population of 1,000,000 or more, the presence of these professional personnel shall be arranged in at least one general acute care hospital for each 1,000,000 persons in the county.

(c) Each county shall designate at least one general acute care hospital to perform examinations on victims of sexual assault, including child molestation.

(d) (1) The protocol published by the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall be used as a guide for the procedures to be used by every public or private general acute care hospital in the state for the examination and treatment of victims of sexual assault and attempted sexual assault, including child molestation, and the collection and preservation of evidence therefrom.

(2) The informational guide developed by the agency or agencies designated by the Director of Finance pursuant to Section 13820 shall be consulted where indicated in the protocol, as well as to gain knowledge about all aspects of examination and treatment of victims of sexual assault and child molestation.

SEC. 24. Section 13879.81 of the Penal Code is amended to read:

13879.81. Communities are encouraged to form multijurisdictional groups that include law enforcement officers, prosecutors, public health professionals, and social workers to address the welfare of children endangered by parental drug use. These coordinated groups should develop standards and protocols, evidenced by memorandums of understanding, that address the following:

(a) Felony and misdemeanor arrests.

(b) Immediate response of protective social workers to a narcotics crime scene involving a child.

(c) Outsourcing protective social workers to law enforcement.

(d) Dependency investigations.

(e) Forensic drug testing and interviewing.

(f) Decontamination of a child found in a lab setting.

(g) Medical examinations and developmental evaluations.

(h) Creation of two hours of P.O.S.T. drug endangered children awareness training.

SEC. 25. Section 285 of the Welfare and Institutions Code is amended to read:

285. All probation officers shall make periodic reports to the Attorney General at those times and in the manner prescribed by the Attorney General, provided that no names or social security numbers shall be transmitted regarding any proceeding under Section 300 or 601.

SEC. 26. Section 15763 of the Welfare and Institutions Code is amended to read:

15763. (a) Each county shall establish an emergency response adult protective services program that shall provide in-person response, 24 hours per day, seven days per week, to reports of abuse of an elder or a dependent adult, for the purpose of providing immediate intake or intervention, or both, to new reports involving immediate life threats and to crises in existing cases. The program shall include policies and procedures to accomplish all of the following:

(1) Provision of case management services that include investigation of the protection issues, assessment of the person's concerns, needs, strengths, problems, and limitations, stabilization and linking with community services, and development of a service plan to alleviate identified problems utilizing counseling, monitoring, followup, and reassessment.

(2) Provisions for emergency shelter or in-home protection to guarantee a safe place for the elder or dependent adult to stay until the dangers at home can be resolved.

(3) Establishment of multidisciplinary teams to develop interagency treatment strategies, to ensure maximum coordination with existing community resources, to ensure maximum access on behalf of elders and dependent adults, and to avoid duplication of efforts.

(b) (1) A county shall respond immediately to any report of imminent danger to an elder or dependent adult residing in other than a long-term care facility, as defined in Section 9701 of the Welfare and Institutions Code, or a residential facility, as defined in Section 1502 of the Health and Safety Code. For reports involving persons residing in a long-term care facility or a residential care facility, the county shall report to the local long-term care ombudsman program. Adult protective services staff shall consult, coordinate, and support efforts of the ombudsman program to protect vulnerable residents. Except as specified in paragraph (2), the county shall respond to all other reports of danger to an elder or dependent adult in other than a long-term care facility or residential care facility within 10 calendar days or as soon as practicably possible.

(2) An immediate or 10-day in-person response is not required when the county, based upon an evaluation of risk, determines and documents that the elder or dependent adult is not in imminent danger and that an immediate or 10-day in-person response is not necessary to protect the health or safety of the elder or dependent adult.

(3) The State Department of Social Services, in consultation with the County Welfare Directors Association, shall develop requirements for implementation of paragraph (2), including, but not limited to, guidelines for determining appropriate application of this section and any applicable documentation requirements.

(4) Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, the department shall implement the requirements developed pursuant to paragraph (3) by means of all-county letters or similar instructions prior to adopting regulations for that purpose. Thereafter, the department shall adopt regulations in accordance with the requirements of Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) A county shall not be required to report or respond to a report pursuant to subdivision (b) that involves danger to an elder or dependent adult residing in any facility for the incarceration of prisoners that is operated by or under contract to the Federal Bureau of Prisons, the Department of Corrections, the California Department of the Youth Authority, a county sheriff's department, a county probation department, a city police department, or any other law enforcement agency when the abuse reportedly has occurred in that facility.

(d) A county shall provide case management services to elders and dependent adults who are determined to be in need of adult protective services for the purpose of bringing about changes in the lives of victims and to provide a safety net to enable victims to protect themselves in the future. Case management services shall include the following, to the extent services are appropriate for the individual:

(1) Investigation of the protection issues, including, but not limited to, social, medical, environmental, physical, emotional, and developmental.

(2) Assessment of the person's concerns and needs on whom the report has been made and the concerns and needs of other members of the family and household.

(3) Analysis of problems and strengths.

(4) Establishment of a service plan for each person on whom the report has been made to alleviate the identified problems.

(5) Client input and acceptance of proposed service plans.

(6) Counseling for clients and significant others to alleviate the identified problems and to implement the service plan.

(7) Stabilizing and linking with community services.
(8) Monitoring and followup.
(9) Reassessments, as appropriate.

(e) To the extent resources are available, each county shall provide emergency shelter in the form of a safe haven or in-home protection for victims. Shelter and care appropriate to the needs of the victim shall be provided for frail and disabled victims who are in need of assistance with activities of daily living.

(f) Each county shall designate an adult protective services agency to establish and maintain multidisciplinary teams including, but not limited to, adult protective services, law enforcement, probation departments, home health care agencies, hospitals, adult protective services staff, the public guardian, private community service agencies, public health agencies, and mental health agencies for the purpose of providing interagency treatment strategies.

(g) Each county shall provide tangible support services, to the extent resources are available, which may include, but not be limited to, emergency food, clothing, repair or replacement of essential appliances, plumbing and electrical repair, blankets, linens, and other household goods, advocacy with utility companies, and emergency response units.

SEC. 27. Any section of any act enacted by the Legislature during the 2004 calendar year that takes effect on or before January 1, 2005, and that amends, amends and renumbers, adds, repeals and adds, or repeals any one or more of the sections affected by this act, with the exception of Assembly Bill 3082, shall prevail over this act, whether this act is enacted prior to, or subsequent to, the enactment of this act. The repeal, or repeal and addition, of any article, chapter, part, title, or division of any code by this act shall not become operative if any section of any other act that is enacted by the Legislature during the 2004 calendar year and takes effect on or before January 1, 2005, amends, amends and renumbers, adds, repeals and adds, or repeals any section contained in that article, chapter, part, title, or division.

SEC. 28. 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 406

An act to amend Sections 4514 and 5328 of the Welfare and Institutions Code, relating to confidential information.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 4514 of the Welfare and Institutions Code is amended to read:

4514. All information and records obtained in the course of providing intake, assessment, and services under Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 6 (commencing with Section 6000), or Division 7 (commencing with Section 7100) to persons with developmental disabilities shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons, whether employed by a regional center or state developmental center, or not, in the provision of intake, assessment, and services or appropriate referrals. The consent of the person with a developmental disability, or his or her guardian or conservator, shall be obtained before information or records may be disclosed by regional center or state developmental center personnel to a professional not employed by the regional center or state developmental center, or a program not vendored by a regional center or state developmental center.

(b) When the person with a developmental disability, who has the capacity to give informed consent, designates individuals to whom information or records may be released, except that nothing in this chapter shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(c) To the extent necessary for a claim, or for a claim or application to be made on behalf of a person with a developmental disability for aid, insurance, government benefit, or medical assistance to which he or she may be entitled.

(d) If the person with a developmental disability is a minor, ward, or conservatee, and his or her parent, guardian, conservator, or limited conservator with access to confidential records, designates, in writing,

persons to whom records or information may be disclosed, except that nothing in this chapter shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(e) For research, provided that the Director of Developmental Services designates by regulation rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. These rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

"

_____

Date

As a condition of doing research concerning persons with developmental disabilities who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, or the person's parent, guardian, or conservator, and I further agree not to divulge any information obtained in the course of the research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services so those persons who received services are identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

_____"

Signed

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Committee on Rules or the Assembly Committee on Rules for the purposes of legislative investigation authorized by the committee.

(i) To the courts and designated parties as part of a regional center report or assessment in compliance with a statutory or regulatory requirement, including, but not limited to, Section 1827.5 of the Probate

Code, Sections 1001.22 and 1370.1 of the Penal Code, Section 6502 of the Welfare and Institutions Code, and Section 56557 of Title 17 of the California Code of Regulations.

(j) To the attorney for the person with a developmental disability in any and all proceedings upon presentation of a release of information signed by the person, except that when the person lacks the capacity to give informed consent, the regional center or state developmental center director or designee, upon satisfying himself or herself of the identity of the attorney, and of the fact that the attorney represents the person, shall release all information and records relating to the person except that nothing in this article shall be construed to compel a physician, psychologist, social worker, marriage and family therapist, nurse, attorney, or other professional to reveal information that has been given to him or her in confidence by a family member of the person unless a valid release has been executed by that family member.

(k) Upon written consent by a person with a developmental disability previously or presently receiving services from a regional center or state developmental center, the director of the regional center or state developmental center, or his or her designee, may release any information, except information that has been given in confidence by members of the family of the person with developmental disabilities, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the regional center or state developmental center director or designee determines that the information is relevant to the evaluation. The consent shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on ''multidisciplinary personnel'' teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) When a person with a developmental disability dies from any cause, natural or otherwise, while hospitalized in a state developmental center, the State Department of Developmental Services, the physician in charge of the client, or the professional in charge of the facility or his or her designee, shall release information and records to the coroner. The State Department of Developmental Services, the physician in charge of

the client, or the professional in charge of the facility or his or her designee, shall not release any notes, summaries, transcripts, tapes, or records of conversations between the resident and health professional personnel of the hospital relating to the personal life of the resident that is not related to the diagnosis and treatment of the resident's physical condition. Any information released to the coroner pursuant to this section shall remain confidential and shall be sealed and shall not be made part of the public record.

(n) To authorized licensing personnel who are employed by, or who are authorized representatives of, the State Department of Health Services, and who are licensed or registered health professionals, and to authorized legal staff or special investigators who are peace officers who are employed by, or who are authorized representatives of, the State Department of Social Services, as necessary to the performance of their duties to inspect, license, and investigate health facilities and community care facilities, and to ensure that the standards of care and services provided in these facilities are adequate and appropriate and to ascertain compliance with the rules and regulations to which the facility is subject. The confidential information shall remain confidential except for purposes of inspection, licensing, or investigation pursuant to Chapter 2 (commencing with Section 1250) and Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, or a criminal, civil, or administrative proceeding in relation thereto. The confidential information may be used by the State Department of Health Services or the State Department of Social Services in a criminal, civil, or administrative proceeding. The confidential information shall be available only to the judge or hearing officer and to the parties to the case. Names which are confidential shall be listed in attachments separate to the general pleadings. The confidential information shall be sealed after the conclusion of the criminal, civil, or administrative hearings, and shall not subsequently be released except in accordance with this subdivision. If the confidential information does not result in a criminal, civil, or administrative proceeding, it shall be sealed after the State Department of Health Services or the State Department of Social Services decides that no further action will be taken in the matter of suspected licensing violations. Except as otherwise provided in this subdivision, confidential information in the possession of the State Department of Health Services or the State Department of Social Services shall not contain the name of the person with a developmental disability.

(o) To any board which licenses and certifies professionals in the fields of mental health and developmental disabilities pursuant to state law, when the Director of Developmental Services has reasonable cause to believe that there has occurred a violation of any provision of law

subject to the jurisdiction of a board and the records are relevant to the violation. The information shall be sealed after a decision is reached in the matter of the suspected violation, and shall not subsequently be released except in accordance with this subdivision. Confidential information in the possession of the board shall not contain the name of the person with a developmental disability.

(p) To governmental law enforcement agencies by the director of a regional center or state developmental center, or his or her designee, when (1) the person with a developmental disability has been reported lost or missing or (2) there is probable cause to believe that a person with a developmental disability has committed, or has been the victim of, murder, manslaughter, mayhem, aggravated mayhem, kidnapping, robbery, carjacking, assault with the intent to commit a felony, arson, extortion, rape, forcible sodomy, forcible oral copulation, assault or battery, or unlawful possession of a weapon, as provided in Section 12020 of the Penal Code.

This subdivision shall be limited solely to information directly relating to the factual circumstances of the commission of the enumerated offenses and shall not include any information relating to the mental state of the patient or the circumstances of his or her treatment unless relevant to the crime involved.

This subdivision shall not be construed as an exception to, or in any other way affecting, the provisions of Article 7 (commencing with Section 1010) of Chapter 4 of Division 8 of the Evidence Code, or Chapter 11 (commencing with Section 15600) and Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(q) To the Youth Authority and Adult Correctional Agency or any component thereof, as necessary to the administration of justice.

(r) To an agency mandated to investigate a report of abuse filed pursuant to either Section 11164 of the Penal Code or Section 15630 of the Welfare and Institutions Code for the purposes of either a mandated or voluntary report or when those agencies request information in the course of conducting their investigation.

(s) When a person with developmental disabilities, or the parent, guardian, or conservator of a person with developmental disabilities who lacks capacity to consent, fails to grant or deny a request by a regional center or state developmental center to release information or records relating to the person with developmental disabilities within a reasonable period of time, the director of the regional or developmental center, or his or her designee, may release information or records on behalf of that person provided both of the following conditions are met:

(1) Release of the information or records is deemed necessary to protect the person's health, safety, or welfare.

(2) The person, or the person's parent, guardian, or conservator, has been advised annually in writing of the policy of the regional center or state developmental center for release of confidential client information or records when the person with developmental disabilities, or the person's parent, guardian, or conservator, fails to respond to a request for release of the information or records within a reasonable period of time. A statement of policy contained in the client's individual program plan shall be deemed to comply with the notice requirement of this paragraph.

(t) (1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(ii) The appointing authority, the person against whom the adverse action has been taken, and the person's representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representative because they were from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and

documents submitted to the administrative tribunal as a component of an appeal from the adverse action.

(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents that are no longer in the possession of the employee or the employee's legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(3) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(4) All records, documents, or other materials containing confidential information protected by this section that have been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(5) For purposes of this subdivision, an adverse action becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.

SEC. 2. Section 5328 of the Welfare and Institutions Code is amended to read:

5328. All information and records obtained in the course of providing services under Division 4 (commencing with Section 4000), Division 4.1 (commencing with Section 4400), Division 4.5 (commencing with Section 4500), Division 5 (commencing with Section 5000), Division 6 (commencing with Section 6000), or Division

7 (commencing with Section 7100), to either voluntary or involuntary recipients of services shall be confidential. Information and records obtained in the course of providing similar services to either voluntary or involuntary recipients prior to 1969 shall also be confidential. Information and records shall be disclosed only in any of the following cases:

(a) In communications between qualified professional persons in the provision of services or appropriate referrals, or in the course of conservatorship proceedings. The consent of the patient, or his or her guardian or conservator shall be obtained before information or records may be disclosed by a professional person employed by a facility to a professional person not employed by the facility who does not have the medical or psychological responsibility for the patient's care.

(b) When the patient, with the approval of the physician, licensed psychologist, social worker with a master's degree in social work, or licensed marriage and family therapist, who is in charge of the patient, designates persons to whom information or records may be released, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family. Nothing in this subdivision shall be construed to authorize a licensed marriage and family therapist to provide services or to be in charge of a patient's care beyond his or her lawful scope of practice.

(c) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(d) If the recipient of services is a minor, ward, or conservatee, and his or her parent, guardian, guardian ad litem, or conservator designates, in writing, persons to whom records or information may be disclosed, except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(e) For research, provided that the Director of Mental Health or the Director of Developmental Services designates by regulation, rules for the conduct of research and requires the research to be first reviewed by the appropriate institutional review board or boards. The rules shall include, but need not be limited to, the requirement that all researchers shall sign an oath of confidentiality as follows:

Date

As a condition of doing research concerning persons who have received services from ____ (fill in the facility, agency or person), I, ____, agree to obtain the prior informed consent of such persons who have received services to the maximum degree possible as determined by the appropriate institutional review board or boards for protection of human subjects reviewing my research, and I further agree not to divulge any information obtained in the course of such research to unauthorized persons, and not to publish or otherwise make public any information regarding persons who have received services such that the person who received services is identifiable.

I recognize that the unauthorized release of confidential information may make me subject to a civil action under provisions of the Welfare and Institutions Code.

(f) To the courts, as necessary to the administration of justice.

(g) To governmental law enforcement agencies as needed for the protection of federal and state elective constitutional officers and their families.

(h) To the Senate Committee on Rules or the Assembly Committee on Rules for the purposes of legislative investigation authorized by the committee.

(i) If the recipient of services who applies for life or disability insurance designates in writing the insurer to which records or information may be disclosed.

(j) To the attorney for the patient in any and all proceedings upon presentation of a release of information signed by the patient, except that when the patient is unable to sign the release, the staff of the facility, upon satisfying itself of the identity of the attorney, and of the fact that the attorney does represent the interests of the patient, may release all information and records relating to the patient except that nothing in this article shall be construed to compel a physician, licensed psychologist, social worker with a master's degree in social work, licensed marriage and family therapist, nurse, attorney, or other professional person to reveal information that has been given to him or her in confidence by members of a patient's family.

(k) Upon written agreement by a person previously confined in or otherwise treated by a facility, the professional person in charge of the facility or his or her designee may release any information, except information that has been given in confidence by members of the person's family, requested by a probation officer charged with the evaluation of the person after his or her conviction of a crime if the

professional person in charge of the facility determines that the information is relevant to the evaluation. The agreement shall only be operative until sentence is passed on the crime of which the person was convicted. The confidential information released pursuant to this subdivision shall be transmitted to the court separately from the probation report and shall not be placed in the probation report. The confidential information shall remain confidential except for purposes of sentencing. After sentencing, the confidential information shall be sealed.

(*l*) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to subdivision (d) of Section 18951. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused child and his or her parents pursuant to Chapter 11 (commencing with Section 18950) of Part 6 of Division 9.

(m) To county patients' rights advocates who have been given knowing voluntary authorization by a client or a guardian ad litem. The client or guardian ad litem, whoever entered into the agreement, may revoke the authorization at any time, either in writing or by oral declaration to an approved advocate.

(n) To a committee established in compliance with Section 4070.

(o) In providing information as described in Section 7325.5. Nothing in this subdivision shall permit the release of any information other than that described in Section 7325.5.

(p) To the county mental health director or the director's designee, or to a law enforcement officer, or to the person designated by a law enforcement agency, pursuant to Sections 5152.1 and 5250.1.

(q) If the patient gives his or her consent, information specifically pertaining to the existence of genetically handicapping conditions, as defined in Section 125135 of the Health and Safety Code, may be released to qualified professional persons for purposes of genetic counseling for blood relatives upon request of the blood relative. For purposes of this subdivision, ''qualified professional persons'' means those persons with the qualifications necessary to carry out the genetic counseling duties under this subdivision as determined by the genetic disease unit established in the State Department of Health Services under Section 125000 of the Health and Safety Code. If the patient does not respond or cannot respond to a request for permission to release information pursuant to this subdivision after reasonable attempts have been made over a two-week period to get a response, the information may be released upon request of the blood relative.

(r) When the patient, in the opinion of his or her psychotherapist, presents a serious danger of violence to a reasonably foreseeable victim or victims, then any of the information or records specified in this section

may be released to that person or persons and to law enforcement agencies as the psychotherapist determines is needed for the protection of that person or persons. For purposes of this subdivision, ''psychotherapist'' means anyone so defined within Section 1010 of the Evidence Code.

(s) (1) To the designated officer of an emergency response employee, and from that designated officer to an emergency response employee regarding possible exposure to HIV or AIDS, but only to the extent necessary to comply with provisions of the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(2) For purposes of this subdivision, ''designated officer'' and ''emergency response employee'' have the same meaning as these terms are used in the Ryan White Comprehensive AIDS Resources Emergency Act of 1990 (P.L. 101-381; 42 U.S.C. Sec. 201).

(3) The designated officer shall be subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV results. Further, the designated officer shall inform the exposed emergency response employee that the employee is also subject to the confidentiality requirements specified in Section 120980, and may be personally liable for unauthorized release of any identifying information about the HIV test results.

(t) (1) To a law enforcement officer who personally lodges with a facility, as defined in paragraph (2), a warrant of arrest or an abstract of such a warrant showing that the person sought is wanted for a serious felony, as defined in Section 1192.7 of the Penal Code, or a violent felony, as defined in Section 667.5 of the Penal Code. The information sought and released shall be limited to whether or not the person named in the arrest warrant is presently confined in the facility. This paragraph shall be implemented with minimum disruption to health facility operations and patients, in accordance with Section 5212. If the law enforcement officer is informed that the person named in the warrant is confined in the facility, the officer may not enter the facility to arrest the person without obtaining a valid search warrant or the permission of staff of the facility.

(2) For purposes of paragraph (1), a facility means all of the following:

(A) A state hospital, as defined in Section 4001.

(B) A general acute care hospital, as defined in subdivision (a) of Section 1250 of the Health and Safety Code, solely with regard to information pertaining to a mentally disordered person subject to this section.

(C) An acute psychiatric hospital, as defined in subdivision (b) of Section 1250 of the Health and Safety Code.

(D) A psychiatric health facility, as described in Section 1250.2 of the Health and Safety Code.

(E) A mental health rehabilitation center, as described in Section 5675.

(F) A skilled nursing facility with a special treatment program for chronically mentally disordered patients, as described in Sections 51335 and 72445 to 72475, inclusive, of Title 22 of the California Code of Regulations.

(u) Between persons who are trained and qualified to serve on multidisciplinary personnel teams pursuant to Section 15610.55, 15753.5, or 15761. The information and records sought to be disclosed shall be relevant to the prevention, identification, management, or treatment of an abused elder or dependent adult pursuant to Chapter 13 (commencing with Section 15750) of Part 3 of Division 9.

(v) The amendment of subdivision (d) enacted at the 1970 Regular Session of the Legislature does not constitute a change in, but is declaratory of, the preexisting law.

(w) This section shall not be limited by Section 5150.05 or 5332.

(x) (1) When an employee is served with a notice of adverse action, as defined in Section 19570 of the Government Code, the following information and records may be released:

(A) All information and records that the appointing authority relied upon in issuing the notice of adverse action.

(B) All other information and records that are relevant to the adverse action, or that would constitute relevant evidence as defined in Section 210 of the Evidence Code.

(C) The information described in subparagraphs (A) and (B) may be released only if both of the following conditions are met:

(i) The appointing authority has provided written notice to the consumer and the consumer's legal representative or, if the consumer has no legal representative or if the legal representative is a state agency, to the clients' rights advocate, and the consumer, the consumer's legal representative, or the clients' rights advocate has not objected in writing to the appointing authority within five business days of receipt of the notice, or the appointing authority, upon review of the objection has determined that the circumstances on which the adverse action is based are egregious or threaten the health, safety, or life of the consumer or other consumers and without the information the adverse action could not be taken.

(ii) The appointing authority, the person against whom the adverse action has been taken, and the person's representative, if any, have entered into a stipulation that does all of the following:

(I) Prohibits the parties from disclosing or using the information or records for any purpose other than the proceedings for which the information or records were requested or provided.

(II) Requires the employee and the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representative because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(III) Requires the parties to submit the stipulation to the administrative tribunal with jurisdiction over the adverse action at the earliest possible opportunity.

(2) For the purposes of this subdivision, the State Personnel Board may, prior to any appeal from adverse action being filed with it, issue a protective order, upon application by the appointing authority, for the limited purpose of prohibiting the parties from disclosing or using information or records for any purpose other than the proceeding for which the information or records were requested or provided, and to require the employee or the employee's legal representative to return to the appointing authority all records provided to them under this subdivision, including, but not limited to, all records and documents from any source containing confidential information protected by this section, and all copies of those records and documents, within 10 days of the date that the adverse action becomes final, except for the actual records and documents or copies thereof that are no longer in the possession of the employee or the employee's legal representatives because they were submitted to the administrative tribunal as a component of an appeal from the adverse action.

(3) Individual identifiers, including, but not limited to, names, social security numbers, and hospital numbers, that are not necessary for the prosecution or defense of the adverse action, shall not be disclosed.

(4) All records, documents, or other materials containing confidential information protected by this section that has been submitted or otherwise disclosed to the administrative agency or other person as a component of an appeal from an adverse action shall, upon proper motion by the appointing authority to the administrative tribunal, be placed under administrative seal and shall not, thereafter, be subject to disclosure to any person or entity except upon the issuance of an order of a court of competent jurisdiction.

(5) For purposes of this subdivision, an adverse action becomes final when the employee fails to answer within the time specified in Section 19575 of the Government Code, or, after filing an answer, withdraws the appeal, or, upon exhaustion of the administrative appeal or of the judicial review remedies as otherwise provided by law.

CHAPTER 407

An act to amend Sections 1623.1, 1624, 1624.05, 1624.1, 2782, 3351, 3692, 3706.1, 3811, 4672, 4672.1, 4986, 5151, and 20583 of the Revenue and Taxation Code, relating to property taxation.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 1623.1 of the Revenue and Taxation Code is amended to read:

1623.1. As an alternative to the nomination and selection procedure provided in Section 1623, the board of supervisors may, by ordinance, provide that it shall appoint the members and alternates of the assessment appeals board, upon the expiration of any term of office or the occurrence of a vacancy on such board. Any person so appointed shall meet the eligibility requirements of Section 1624 or 1624.05, whichever is applicable.

SEC. 2. Section 1624 of the Revenue and Taxation Code is amended to read:

1624. (a) A person is not eligible for nomination for membership on an assessment appeals board unless he or she meets one of the following criteria:

(1) Has a minimum of five years professional experience in this state as a certified public accountant or public accountant, a licensed real estate broker, an attorney, a property appraiser accredited by a nationally recognized professional organization, or a property appraiser certified by the Office of Real Estate Appraisers, or a property appraiser certified by the State Board of Equalization.

(2) Is a person who the nominating member of the board of supervisors has reason to believe is possessed of competent knowledge of property appraisal and taxation.

(b) Documentation of qualifying experience of appeals board members shall be filed with the clerk of the board.

(c) This section shall apply only to an assessment appeals board in a county with a population of less than 200,000.

(d) County population estimates conducted by the Department of Finance pursuant to Section 13073.5 of the Government Code shall be used in determining the population of a county for purposes of this section.

SEC. 3. Section 1624.05 of the Revenue and Taxation Code is amended to read:

1624.05. (a) A person shall not be eligible for nomination for membership on an assessment appeals board unless he or she has a minimum of five years' professional experience in this state as one of the following: certified public accountant or public accountant, licensed real estate broker, attorney, property appraiser accredited by a nationally recognized professional organization, property appraiser certified by the Office of Real Estate Appraisers, or property appraiser certified by the State Board of Equalization.

(b) Notwithstanding the provisions of subdivision (a), a person shall be eligible for nomination for membership on an assessment appeals board if, at the time of the nomination, he or she is a current member of an assessment appeals board.

(c) Documentation of qualifying experience of appeals board members shall be filed with the clerk of the board.

(d) This section shall apply only to an assessment appeals board in a county with a population of 200,000 or more.

(e) County population estimates conducted by the Department of Finance pursuant to Section 13073.5 of the Government Code shall be used in determining the population of a county for purposes of this section.

SEC. 4. Section 1624.1 of the Revenue and Taxation Code is amended to read:

1624.1. No person shall be qualified to be a member of an assessment appeals board who has, within the three years immediately preceding his or her appointment to that board, been an employee of an assessor's office.

SEC. 5. Section 2782 of the Revenue and Taxation Code is amended to read:

2782. If a replicated tax payment is not returned to the tendering party within 60 days as provided in this chapter, the county shall, in addition to returning the replicated payment as soon as practicable, pay the tendering party interest, if that interest is ten dollars ($10) or more, on the amount of replicated payment at the rate provided in Section 5151. The interest shall be computed for the period beginning 60 days after the county receives the replicated payment to the date the replicated payment is returned to the tendering party.

SEC. 6. Section 3351 of the Revenue and Taxation Code is amended to read:

3351. (a) Annually, on or before June 8, the tax collector shall publish a notice of impending default for failure to pay taxes on real property, except tax-defaulted property and possessory interests, the taxes, assessments, penalties, and costs on which will have not been fully paid by the close of business on June 30, or the next business day if June 30 falls on a Saturday, Sunday, or a legal holiday.

(b) If the tax collector sends reminder notices prior to the close of the fiscal year and annually sends a redemption notice of prior year due taxes, the notice required by subdivision (a) shall only include properties that have been tax-delinquent for three or more years and for which the latest reminder notice or redemption notice was returned to the tax collector as undeliverable.

SEC. 7. Section 3692 of the Revenue and Taxation Code is amended to read:

3692. (a) The tax collector shall attempt to sell tax-defaulted property, as provided in this chapter, within four years of the time that the property becomes subject to sale for nonpayment of taxes unless, by other provisions of law, the property is not subject to sale. If there are no acceptable bids at the attempted sale, the tax collector shall attempt to sell the property at intervals of no more than six years until the property is sold.

(b) When oil, gas, or mineral rights are subject to sale for nonpayment of taxes, the tax collector may offer the interest at minimum bid to the holders of outstanding interests where the interest subject to sale is a partial interest or, where the interest subject to sale is a complete and undivided interest, to the owner or owners of the property to which the oil, gas, or mineral rights are appurtenant.

(c) When parcels that are rendered unusable by their size, location, or other conditions are subject to sale for nonpayment of taxes, the tax collector may offer the parcel, at a minimum bid, to owners of contiguous parcels or to a holder of record of either a predominant easement or a right-of-way easement. If the parcel is sold to a contiguous property owner, the tax collector shall require that the successful bidder request the assessor and the planning director to combine the unusable parcel with the bidder's own parcel as a condition of sale.

(d) Sealed bid sale procedures shall be used when offers are made pursuant to subdivision (b) or subdivision (c), and the property shall be sold to the highest eligible bidder. The offers shall remain in effect for 30 days or until notice is given pursuant to Section 3702, whichever is later.

(e) The Notice to the Board of Supervisors and Notice of Intended Sale of Tax-Defaulted Property shall indicate that any parcel remaining

unsold may be reoffered within a 90-day period and any new parties of interest shall be notified in accordance with Section 3701. This subdivision does not apply to properties sold pursuant to Chapter 8 (commencing with Section 3771).

SEC. 8. Section 3706.1 of the Revenue and Taxation Code is amended to read:

3706.1. The tax collector shall have authority to postpone the public auction sale or any portion thereof under the following conditions:

(a) Notice of any postponement of the sale shall be made by the tax collector who, by public declaration at the time and place originally fixed for the sale, may postpone the sale to a new time, date, and place. No other notice of the postponed sale need be given if the date for the new time, date, and place is within seven days of the time originally fixed for the sale.

(b) Notice of any postponed sale that is scheduled to be held not less than eight days nor more than 90 days from the time originally fixed for the sale, shall be made pursuant to the same provisions that were followed in providing notice of the original sale to parties of interest, as defined in Section 4675.

SEC. 9. Section 3811 of the Revenue and Taxation Code is amended to read:

3811. On execution of the deed to the taxing agency or nonprofit organization the tax collector shall report the following to the Controller, the assessor, and the auditor:

(a) The name of the purchaser.

(b) The effective date of the sale and the date of the transfer of the deed to the taxing agency or nonprofit organization.

(c) The amount for which the property was sold.

(d) The description of the property conveyed.

SEC. 10. Section 4672 of the Revenue and Taxation Code is amended to read:

4672. (a) There shall be distributed to the State of California, to be placed in the General Fund, one dollar and fifty cents ($1.50) for all or any portion of each separately valued parcel of real property that is both subject to a power of sale pursuant to Section 3691 and sold to private parties or to a taxing agency.

(b) The one dollar and fifty cents ($1.50) required to be distributed, pursuant to subdivision (a), shall be paid from the total proceeds of the sale. If the total amount of proceeds from the sale is insufficient, the one dollar and fifty cents ($1.50) shall be reduced accordingly.

SEC. 11. Section 4672.1 of the Revenue and Taxation Code is amended to read:

4672.1. (a) There shall be distributed to the county general fund to reimburse the county for the cost of conducting the sale, one hundred

fifty dollars ($150) for all or any portion of each separately valued parcel of real property subject to a power of sale pursuant to Section 3691 and sold to private parties or to a taxing agency.

(b) The one hundred fifty dollars ($150) required to be distributed pursuant to subdivision (a), shall be paid from the total proceeds of the sale only after satisfaction of the amount specified in Section 4672. If the amount of proceeds from the sale is insufficient, the one hundred fifty dollars ($150) shall be reduced accordingly.

SEC. 12. Section 4986 of the Revenue and Taxation Code is amended to read:

4986. (a) All or any portion of any tax, penalty, or costs, heretofore or hereafter levied, shall, on satisfactory proof, be canceled by the auditor if it was levied or charged:

(1) More than once.

(2) Erroneously or illegally.

(3) On the canceled portion of an assessment that has been decreased pursuant to a correction authorized by Article 2 (commencing with Section 4876) of Chapter 2.

(4) On property that did not exist on the lien date.

(5) On property annexed after the lien date by the public entity owning it.

(6) On property acquired by the United States, the state, or by any county, city, school district or other public entity, to the extent provided in Article 5 (commencing with Section 5081).

(7) On that portion of an assessment in excess of the value of the property as determined by the assessor pursuant to Section 469.

(b) No cancellation under paragraph (2) of subdivision (a) may be made in respect of all or any portion of any tax, or penalties or costs attached thereto, collectible by county officers on behalf of a city without the written consent of the city attorney or other officer designated by the city council unless the city council has authorized the cancellation by county officers. The resolution shall remain effective until rescinded by the city council.

(c) If the tax, penalty, or costs, are collected more than four years following the enrollment of the tax bill, the cancellation authorized pursuant to subdivision (a) may be performed if the cancellation action is initiated within 120 days of the payment.

SEC. 13. Section 20583 of the Revenue and Taxation Code is amended to read:

20583. (a) ''Residential dwelling'' means a dwelling occupied as the principal place of residence of the claimant, and so much of the land surrounding it as is reasonably necessary for use of the dwelling as a home, owned by the claimant, the claimant and spouse, or by the claimant and either another individual eligible for postponement under

this chapter or an individual described in subdivision (a), (b) or (c) of Section 20511 and located in this state. It shall include condominiums and mobilehomes that are assessed as realty for local property tax purposes. It also includes part of a multidwelling or multipurpose building and a part of the land upon which it is built. In the case of a mobilehome not assessed as real property that is located on land owned by the claimant, residential ''dwelling'' includes the land on which the mobilehome is situated and so much of the land surrounding it as reasonably necessary for use of the mobilehome as a home.

(b) As used in this chapter in reference to ownership interests in residential dwellings, ''owned'' includes (1) the interest of a vendee in possession under a land sale contract provided that the contract or memorandum thereof is recorded and only from the date of recordation of the contract or memorandum thereof in the office of the county recorder where the residential dwelling is located, (2) the interest of the holder of a life estate provided that the instrument creating the life estate is recorded and only from the date of recordation of the instrument creating the life estate in the office of the county recorder where the residential dwelling is located, but ''owned'' does not include the interest of the holder of any remainder interest or the holder of a reversionary interest in the residential dwelling, (3) the interest of a joint tenant or a tenant in common in the residential dwelling or the interest of a tenant where title is held in tenancy by the entirety or a community property interest where title is held as community property, and (4) the interest in the residential dwelling in which the title is held in trust, as described in subdivision (d) of Section 62, provided that the Controller determines that the state's interest is adequately protected.

(c) For purposes of this chapter, the registered owner of a mobilehome shall be deemed to be the owner of the mobilehome.

(d) Except as provided in subdivision (c), and Chapter 3 (commencing with Section 20625), ownership must be evidenced by an instrument duly recorded in the office of the county where the residential dwelling is located.

(e) ''Residential dwelling'' does not include any of the following:

(1) Any residential dwelling in which the owners do not have an equity of at least 20 percent of the full value of the property as determined for purposes of property taxation or at least 20 percent of the fair market value as determined by the Controller and where the Controller determines that the state's interest is adequately protected. The 20 percent equity requirement shall be met at the time the claimant or authorized agent files an initial postponement claim and tenders to the tax collector the initial certificate of eligibility described in Sections 20602, 20639.6, and 20640.6.

(2) Any residential dwelling in which the claimant's interest is held pursuant to a contract of sale or under a life estate, unless the claimant obtains the written consent of the vendor under the contract of sale, or the holder of the reversionary interest upon termination of the life estate for the postponement of taxes and the creation of a lien on the real property in favor of the state for amounts postponed pursuant to this act.

(3) Any residential dwelling on which the claimant does not receive a secured tax bill.

(4) Any residential dwelling in which the claimant's interest is held as a possessory interest, except as provided in Chapter 3.5 (commencing with Section 20640).

(5) (A) Except as provided in this section, any residential dwelling on which the property taxes, as defined in Section 20584, are delinquent at the time the application for postponement under this chapter is made or on which any other property tax or special assessment imposed by a special district or other tax code area is delinquent at the time the application for postponement under this chapter is made.

(B) Any taxes or assessments described in subparagraph (A) that are delinquent on July 1, 1977, will not disqualify an otherwise eligible dwelling for postponement under this chapter. An application for postponement under this chapter to postpone the payment of property taxes for the 1977–78 fiscal year, shall also constitute an application for the postponement of all those delinquent taxes and assessments, together with any penalties, interest, fees, or other charges resulting from that delinquency and those amounts shall, unless otherwise paid by the claimant, be paid out of the amount appropriated by Section 16100 of the Government Code and shall be added to and become part of the obligation secured by the lien provided by Section 16182 of the Government Code; provided, however, that upon payment of delinquent taxes and assessments for fiscal year 1976–77 out of the amount appropriated by Section 16100, any delinquent penalties, interest, fees or other charges resulting from the delinquency of those taxes and assessments for fiscal year 1976–77 shall be canceled.

(C) For 1978–79 and thereafter, any taxes or assessments described in subparagraph (A) that became delinquent after the claimant was 62 and before the claimant first has established a lien pursuant to Section 16182 of the Government Code will not disqualify an otherwise eligible dwelling for postponement under this chapter. An application to postpone taxes for 1978–79 or thereafter shall also constitute an application for the postponement of all delinquent taxes and assessments, together with any penalties, interest, fees, or other charges resulting from the delinquency and those amounts shall, unless otherwise paid by the claimant, be paid out of the amount appropriated by Section 16100 of the Government Code and shall be added to and

become part of the obligation secured by the lien provided by Section 16182 of the Government Code.

(6) All taxes or assessments described in subparagraph (A) of paragraph (5) that are delinquent on the date this bill takes effect will not disqualify an otherwise eligible blind or disabled applicant's dwelling from postponement under this chapter. A blind or disabled citizen's application for postponement of property taxes will not constitute an application for the postponement of any delinquent taxes and assessments, or any penalties, interest, fees or other charges resulting from delinquency. Delinquent taxes of blind or disabled applicants are not subject to postponement under this chapter.

CHAPTER 408

An act to amend Sections 56505 and 56505.2 of the Education Code, relating to special education.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 56505 of the Education Code is amended to read:

56505. (a) The state hearing shall be conducted in accordance with regulations adopted by the board.

(b) The hearing shall be held at a time and place reasonably convenient to the parent or guardian and the pupil.

(c) The hearing shall be conducted by a person knowledgeable in the laws and regulations governing special education and administrative hearings pursuant to Section 56504.5, and who has satisfactorily completed training pursuant to this subdivision. The Superintendent shall establish standards for the training of hearing officers, the degree of specialization of the hearing officers, and the quality control mechanisms to be used to ensure that the hearings are fair and the decisions are accurate. A due process hearing may not be conducted by any individual listed in subsection (a) of Section 300.508 of Title 34 of the Code of Federal Regulations. Pursuant to subsection (b) of Section 300.508 of the Title 34 of the Code of Federal Regulations, a person who is qualified to conduct a hearing is not an employee of the agency solely because he or she is paid by the agency to serve as a hearing officer. The hearing officer shall encourage the parties to a hearing to consider the option of mediation as an alternative to a hearing.

(d) Pursuant to subsection (a) of Section 300.514 of Title 34 of the Code of Federal Regulations, during the pendency of the hearing proceedings, including the actual state-level hearing, or judicial proceeding regarding a due process hearing, the pupil shall remain in his or her present placement, except as provided in Section 300.526 of Title 34 of the Code of Federal Regulations, unless the public agency and the parent or guardian agree otherwise. A pupil applying for initial admission to a public school shall, with the consent of his or her parent or guardian, be placed in the public school program until all proceedings have been completed. As provided in subsection (c) of Section 300.514 of Title 34 of the Code of Federal Regulations, if the decision of a hearing officer in a due process hearing or a state review official in an administrative appeal agrees with the parent or guardian of the pupil that a change of placement is appropriate, that placement shall be treated as an agreement between the state or local agency and the parent or guardian.

(e) Any party to the hearing held pursuant to this section shall be afforded the following rights consistent with state and federal statutes and regulations:

(1) The right to be accompanied and advised by counsel and by individuals with special knowledge or training relating to the problems of individuals with exceptional needs.

(2) The right to present evidence, written arguments, and oral arguments.

(3) The right to confront, cross-examine, and compel the attendance of, witnesses.

(4) The right to a written, or, at the option of the parents or guardians, electronic verbatim record of the hearing.

(5) The right to written, or, at the option of the parent or guardian, electronic findings of fact and decisions. The record of the hearing and the findings of fact and decisions shall be provided at no cost to parents or guardians in accordance with paragraph (2) of subsection (c) of Section 300.509 of Title 34 of the Code of Federal Regulations. The findings and decisions shall be made available to the public after any personally identifiable information has been deleted consistent with the confidentiality requirements of subsection (c) of Section 1417 of Title 20 of the United States Code and shall also be transmitted to the Advisory Commission on Special Education pursuant to paragraph (4) of subsection (h) of Section 1415 of Title 20 of the United States Code.

(6) The right to be informed by the other parties to the hearing, at least 10 days prior to the hearing, as to what those parties believe are the issues to be decided at the hearing and their proposed resolution of those issues. Upon the request of a parent who is not represented by an attorney, the agency responsible for conducting hearings shall provide a mediator to

assist the parent in identifying the issues and the proposed resolution of the issues.

(7) The right to receive from other parties to the hearing, at least five business days prior to the hearing, a copy of all documents and a list of all witnesses and their general area of testimony that the parties intend to present at the hearing. Included in the material to be disclosed to all parties at least five business days prior to a hearing shall be all assessments completed by that date and recommendations based on the assessments that the parties intend to use at the hearing.

(8) The right, pursuant to paragraph (3) of subsection (a) of Section 300.509 of Title 34 of the Code of Federal Regulations, to prohibit the introduction of any evidence at the hearing that has not been disclosed to that party at least five business days before the hearing.

(f) The hearing conducted pursuant to this section shall be completed and a written, reasoned decision, including the reasons for any nonpublic, nonsectarian school placement, the provision of nonpublic, nonsectarian agency services, or the reimbursement for such placement or services, taking into account the requirements of subdivision (a) of Section 56365, shall be mailed to all parties to the hearing within 45 days from the receipt by the Superintendent of the request for a hearing. Either party to the hearing may request the hearing officer to grant an extension. The extension shall be granted upon a showing of good cause. Any extension shall extend the time for rendering a final administrative decision for a period only equal to the length of the extension.

(g) Subdivision (f) does not alter the burden of proof required in a due process hearing, or prevent a hearing officer from ordering a compensatory remedy for an individual with exceptional needs.

(h) The hearing conducted pursuant to this section shall be the final administrative determination and binding on all parties.

(i) In decisions relating to the placement of individuals with exceptional needs, the person conducting the state hearing shall consider cost, in addition to all other factors that are considered.

(j) In a hearing conducted pursuant to this section, the hearing officer may not base a decision solely on nonsubstantive procedural errors, unless the hearing officer finds that the nonsubstantive procedural errors resulted in the loss of an educational opportunity to the pupil or interfered with the opportunity of the parent or guardian of the pupil to participate in the formulation process of the individualized education program.

(k) This chapter does not preclude a party aggrieved by the findings and decisions in a hearing under this section from exercising the right to appeal the decision to a state court of competent jurisdiction. An aggrieved party may also exercise the right to bring a civil action in a district court of the United States without regard to the amount in

controversy, pursuant to Section 300.512 of Title 34 of the Code of Federal Regulations. An appeal shall be made within 90 days of receipt of the hearing decision. During the pendency of any administrative or judicial proceeding conducted pursuant to Chapter 5 (commencing with Section 56500), the child involved in the hearing shall remain in his or her present educational placement, unless the public education agency and the parent or guardian of the child agree otherwise. Any action brought under this subdivision shall adhere to the provisions of subsection (b) of Section 300.512 of Title 34 of the Code of Federal Regulations.

(*l*) Any request for a due process hearing arising under subdivision (a) of Section 56501 shall be filed within three years from the date the party initiating the request knew or had reason to know of the facts underlying the basis for the request.

(m) Pursuant to subsection (c) of Section 300.508 of Title 34 of the Code of Federal Regulations, each public education agency shall keep a list of the persons who serve as due process hearing officers, in accordance with Section 56504.5, and the list shall include a statement of the qualifications of each of those persons. The list of hearing officers shall be provided to the public education agencies by the organization or entity under contract with the department to conduct due process hearings.

SEC. 2. Section 56505.2 of the Education Code is amended to read:

56505.2. (a) A hearing officer may not render a decision that results in the placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or that results in a service for an individual with exceptional needs provided by a nonpublic, nonsectarian agency, if the school or agency has not been certified pursuant to Section 56366.1.

(b) A hearing officer shall consider Sections 56365, 56366, and 56366.1 during a due process hearing concerning an issue of placement of an individual with exceptional needs in a nonpublic, nonsectarian school, or services for an individual with exceptional needs provided by a nonpublic, nonsectarian agency.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because this act implements a federal law or regulation and results only in costs mandated by the federal government, within the meaning of Section 17556 of the Government Code.

CHAPTER 409

An act to add and repeal Section 7550.5 of the Government Code, relating to public agencies, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 7550.5 is added to the Government Code, to read:

7550.5. (a) For purposes of this section:

(1) ''Public agency'' means any state or local agency or district, including, but not limited to, a school district, the University of California, the California State University, and the California Community Colleges.

(2) ''Written report'' means a document that a statute requires to be prepared and submitted to the Legislature, the Governor, or any state legislative or executive body.

(b) Notwithstanding any other provision of law, a public agency may, but is not required to, prepare or submit any written report to the Legislature, the Governor, or any state legislative or executive body unless the report is specified in subdivision (c) or any of the following has occurred:

(1) The report is required, in whole or in part, by a court order, federal law, or federal regulation.

(2) The report is required in the annual Budget Act or in any accompanying supplemental budget report prepared by the Legislative Analyst.

(3) The Legislature expressly provides that, notwithstanding this section, a written report shall be prepared and submitted.

(4) The report is necessary for the preparation of the annual Budget Act or the implementation of that act, as determined by the Department of Finance.

(5) The report is required pursuant to Division 1.2 (commencing with Section 473) of the Business and Professions Code or is required by statute for any entity governed by Division 2, 3, or 8 of the Business and Professions Code.

(c) Reports shall be prepared and submitted pursuant to the following provisions of law:

(1) Sections 806, 4425, 4996.22, 4999.8, 6086.15, 6095, 6145, 6177, 7011.8, 7021, 7139.7, 19441, and 19617.4 of the Business and Professions Code.

(2) Sections 5930, 14030.2, and 14076 of the Corporations Code.

(3) Sections 408, 425, 8007, 8236, 8261, 8278.3, 8359, 8451, 11023, 12141, 12142, 12510, 14502, 14508, 17078.66, 17199.4, 22217, 22218.5, 22311.5, 22324, 22352, 22362, 24400, 25933, 25950, 32296.1, 33053, 33126, 33126.1, 33328, 33595, 35256, 35294.14, 37252.1, 37670, 41020.6, 41320, 41320.3, 41339, 41407, 42263, 42269, 42923, 42925, 44225.6, 44238, 44252.1, 44252.9, 44253.10, 44257.4, 44258.9, 44259.5, 44259.8, 44279.2, 44306, 44329, 44393, 44403, 44507, 44516, 44735, 47602, 47614.5, 47616.5, 47773, 48005.45, 48200.7, 48200.8, 48664, 49082, 49436, 51728, 51745.1, 52042, 52052, 52055.640, 52055.656, 52058, 52171.6, 52184, 52243, 52247, 52314, 52902.5, 54006, 56494, 56867, 58560, 60630, 60800, 60830.7, 60852.5, 60855, 60900, 62000.14, 63053, 64201, 66015.7, 66742, 66743, 66755, 66903, 66941, 67312, 67359, 67359.16, 67380, 69437.7, 69506.5, 69508, 69529.5, 69532, 69561.5, 69563, 69615.4, 69618.8, 69655, 69989, 71020, 71027, 71051, 78032, 78275.5, 79148, 81254, 84040, 84040.5, 84040.6, 84362, 84754, 84758, 87164, 87482.4, 88550, 89030.1, 89343, 89720, 89753, 99105, 99155, 99182, and 99240 of the Education Code.

(4) Sections 3032, 17600, and 17602 of the Family Code.

(5) Sections 411, 2281, 12794.5, 13144, and 13152 of the Food and Agricultural Code.

(6) Sections 965.4, 965.65, 3541.3, 7085, 7299.4, 7299.6, 7504, 8169.5, 8245, 8878.97, 9148.4, 11017.5, 11678, 12010.6, 12017, 12020, 12021, 12080.2, 12170, 12174, 12329, 12439, 12460, 12461, 12461.1, 12463, 12463.1, 12463.3, 12468, 12522, 12741, 12803.2, 13308, 13337, 13405, 14051, 14524.16, 14525.5, 14535, 14536, 14840, 15320, 15323.5, 15335.11, 15363.73, 15399.45, 15901, 16725, 16759, 16855, 17570, 17600, 17601, 19237, 19405, 19683, 19702.5, 19705, 19792.5, 19793, 19795, 19816.20, 19826, 19827.2, 19849.11, 19994.20, 19996.21, 19996.40, 20194, 20208, 20228, 20232, 20233, 20235, 20236, 20237, 20238, 20398, 20405.1, 21499, 22791, 22840.3, 30063, 53084, 53299, 65048, 65400, 68511, 68513, 68563, 68604, 75089.1, and 77209 of the Government Code.

(7) Sections 900, 901, 1266.1, 1276.4, 1316.5, 1342.3, 1347, 1357.16, 1367.695, 1371.37, 1371.38, 1371.39, 1374.36, 1380.1, 1438, 1596.872a, 1596.872b, 1797.98b, 1797.121, 1799.204, 11495, 11756.8, 11970.2, 18502.5, 18870.3, 26203, 33426.7, 35815, 40448.5.1, 40452, 42860, 44525.6, 50199.15, 50408, 50452, 50459, 50834, 51005, 51454, 51622, 53305, 53311, 59019, 101950, 104187, 104315, 108923, 115255, 116095, 116355, 116365.5, 127365, 128725, 128735, 128736, 128737, 128740, 128745, 128748, 128750, 128755, 129045, and 129075 of the Health and Safety Code.

(8) Sections 742.435, 1060, 1067.13, 1758.994, 1872.96, 10089.13, 10089.27, 10089.84, 10123.84, 11751.51, 11805, 11860, 12693.92, 12693.93, 12922, 12961, and 12962 of the Insurance Code.

(9) Sections 77, 90.5, 98.75, 111, 147.2, 1143, 3073.5, 3201.5, 3716.5, 3729, 5502, 6330, 7316, 7384, and 7722 of the Labor Code.

(10) Sections 73.5, 179, 974.5, 999.7, and 1012.5 of the Military and Veterans Code.

(11) Sections 628.2, 629.62, 6031.2, 7445, 10359, 13010, 13010.5, 13012, 13012.5, 13014, and 13519.4 of the Penal Code.

(12) Sections 10115.5, 10359, 10722, and 20133 of the Public Contract Code.

(13) Sections 2797, 3258, 4515, 4612, 5090.32, 5653, 21080.5, 30012, 30342, 30519.5, 30533, 36980, 36994, 42885.5, 42889.3, 42889.4, 71211, 71212, 71271, and 71300 of the Public Resources Code.

(14) Sections 316.5, 389, 873, 2881, 3346, 99243, and 132352.6 of the Public Utilities Code.

(15) Sections 1647, 1648, 1649, 6377, 17053.49, and 23649 of the Revenue and Taxation Code.

(16) Sections 164.56, 188.5, and 2154 of the Streets and Highways Code.

(17) Sections 329, 832, 995, 2614, 4901, 9600, 9616, 9616.1, 9617, 9907, 10004, 10205, 10532, 11011, 11014, 12141, 15037, 15064, 15079, and 17002 of the Unemployment Insurance Code.

(18) Sections 1821 and 23249 of the Vehicle Code.

(19) Sections 73502, 73505, 79421, and 81674 of the Water Code.

(20) Sections 209, 4024, 4109.5, 4365.5, 4429, 4430, 4432, 4540, 4565, 4681.1, 4691, 4696.1, 4836, 5613, 5772, 5814, 10090, 10822, 10823, 11329, 11373, 11462, 12301.6, 13913, 14026.5, 14051, 14067, 14085.5, 14100.5, 14120, 14124.12, 14126.80, 14132, 14133.9, 14148.8, 14148.91, 14161, 14165.9, 14459.5, 14459.7, 14501, 15204.4, 15204.8, 16206, 16981, 16996.2, 18236, 19106, 19356.6, and 25003 of the Welfare and Institutions Code.

(21) (A) Statutes of 2003—Section 2 of Chapter 896, Section 1 of Chapter 795, and Section 24.60 of Chapter 157.

(B) Statutes of 2001—Section 53.5 of Chapter 171 and Section 24.60 of Chapter 106.

(C) Statutes of 2000—Section 2 of Chapter 913, Section 3 of Chapter 902, Section 1 of Chapter 457, Section 8 of Chapter 403, and Section 24.60 of Chapter 52.

(D) Section 1 of Chapter 5 of the Statutes of 1999–2000 First Extraordinary Session.

(E) Statutes of 1999—Section 2 of Chapter 973, Section 2 of Chapter 954, Section 2 of Chapter 402, Section 2 of Chapter 337, and Section 1 of Chapter 195.

(F) Statutes of 1998—Section 1 of Chapter 1051, Section 55 of Chapter 329, Section 75 of Chapter 311, and Resolution Chapter 113.

(G) Statutes of 1997—Section 69 of Chapter 854, Section 7 of Chapter 813, Section 13 of Chapter 812, Section 12 of Chapter 812, and Section 2 of Chapter 767.

(H) Statutes of 1996—Section 55 of Chapter 954, and Section 6 of Chapter 69.

(I) Statutes of 1995—Section 7 of Chapter 789.

(J) Statutes of 1992—Section 6 of Chapter 1068.

(K) Statutes of 1991—Section 13 of Chapter 760.

(L) Statutes of 1989—Section 6 of Chapter 1306, Section 10 of Chapter 1071, and Resolution Chapter 174.

(M) Statutes of 1988—Section 2 of Chapter 1495, Section 3 of Chapter 1397, Section 60 of Chapter 973, Section 59 of Chapter 973, and Section 1 of Chapter 659.

(N) Statutes of 1987—Section 7 of Chapter 136.

(22) Statutes of 1969—Section 127 of Chapter 209, as amended by Chapter 155 of the Statutes of 2004.

(23) Items 0250-101-0001, 0450-101-0932, 0820-001-0001, 0840-001-0001, 0845-001-0217, 2240-001-0933, 2240-109-0001, 2240-112-0001, 2400-001-0933, 4170-001-0001, 4280-112-0236, 4440-001-0001, 5100-001-0870, 5100-311-0690, 5180-101-0001, 6110-156-0890, 6110-485-0001, 6870-101-0001, and 8960-011-0001 of Section 2.00 of the Budget Act of 2000.

(24) Section 6 of Article VI of the California Constitution.

(25) All reports pertaining to Item 6610-001-0001 required in the Legislative Analyst's Office's Supplemental Report of the Budget Act of 2002.

(26) Any report required by a bill that was approved by the Senate Committee on Transportation on or after January 1, 1999.

(27) Any report that is required to be submitted to the Joint Legislative Audit Committee.

(28) All reports statutorily required to be prepared by the California Environmental Protection Agency or its boards, departments, or offices.

(29) Any report required by any law enacted on or after January 1, 2003.

(d) This section may not be construed to require resubmission of a one-time report that is required by statute if that report already has been submitted as required.

(e) This section may not be construed to interfere with an exclusive representative's right to request or receive information related to its

representation of state and California State University employees under Chapter 10.3 (commencing with Section 3512) and Chapter 12 (commencing with Section 3560). A public agency shall not use this section to justify the denial of information under those provisions.

(f) Paragraph (28) of subdivision (c) shall become operative only if Assembly Bill 2701 of the 2003–04 Regular Session is enacted and becomes operative.

(g) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 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:

A drastic reduction in state resources available for the preparation and submission of written reports to the Legislature and the Governor requires that this act take effect immediately.

CHAPTER 410

An act to amend Section 1350 of the Military and Veterans Code, and to amend Section 18702 of the Revenue and Taxation Code, relating to taxation, and making an appropriation therefor.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 1350 of the Military and Veterans Code is amended to read:

1350. There is hereby established the National World War II Veterans Memorial Trust Fund to receive those moneys transferred in accordance with Section 18702 of the Revenue and Taxation Code. The moneys in the trust fund are hereby appropriated to the Controller for allocation to the American Battle Monuments Commission for the construction and maintenance of the World War II Memorial described in Section 1 of Chapter 864 of the Statutes of 1999.

SEC. 2. Section 18702 of the Revenue and Taxation Code is amended to read:

18702. (a) The Franchise Tax Board shall annually determine the total amount designated pursuant to subdivision (a) of Section 18701 and notify the Controller of that amount.

(b) The Controller shall transfer the amount determined under subdivision (a), less the direct, actual costs of the Franchise Tax Board and the Controller for the collection and administration of funds under this article, to the National World War II Veterans Memorial Trust Fund, established pursuant to Section 1350 of the Military and Veterans Code, for use on the World War II Memorial in Washington, D.C. Upon appropriation by the Legislature, the Controller shall transfer the amount of reimbursement for direct actual costs incurred by the Franchise Tax Board and the Office of the Controller in the administration of this fund.

(c) All funds deposited in the National World War II Veterans Memorial Trust Fund, shall be allocated in accordance with Section 1350 of the Military and Veterans Code, to the American Battle Monuments Commission for the construction and maintenance of the World War II Memorial described in Section 1 of Chapter 864 of the Statutes of 1999.

CHAPTER 411

An act to add Section 1366.2 to the Health and Safety Code, relating to health care, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 1366.2 is added to the Health and Safety Code, to read:

1366.2. (a) A full health care service plan shall make available to a group subscriber, upon request, the termination date of all major health care provider contracts that are for services in the geographic area for which the group subscriber has secured coverage and that include a specified termination date.

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

(1) ''Enrollee'' means a person who is enrolled in a health care service plan and who is a recipient of services from the plan.

(2) ''Full health care service plan'' means a plan that meets the definition set forth in subdivision (f) of Section 1345, and that has a total enrolled membership exceeding 499,999 enrollees.

(3) ''Hospital'' means a general acute care hospital.

(4) ''Major health care provider contract'' means a contract between a full service plan and provider group or hospital covering more than 25,000 of that plan's enrollees. ''Major health care provider contract'' does not mean a provider contract between a specialized health care service plan and a provider group or hospital.

(5) ''Provider group'' means a medical group, independent practice association, or other similar group of providers with a total enrolled membership exceeding 99,999 enrollees.

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.

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

In order for group subscribers to obtain information regarding the availability of certain health care provider groups under a health care service plan at the earliest possible time to assist their health care coverage decisions, it is necessary that this act take effect immediately.

CHAPTER 412

An act to amend Sections 7099.1 and 21028 of the Revenue and Taxation Code, and to amend Section 13019 of the Unemployment Insurance Code, relating to taxation.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 7099.1 of the Revenue and Taxation Code is amended to read:

7099.1. (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 State Board of Equalization.

(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.

(b) The privilege under subdivision (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation in any tax shelter, 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, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 2. 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, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

SEC. 3. Section 13019 of the Unemployment Insurance Code is amended to read:

13019. (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 Employment Development Department.

(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.

(b) The privilege under subdivision (a) shall not apply to any written communication between a federally authorized tax practitioner and a director, shareholder, officer, or employee, agent, or representative of a corporation in connection with the promotion of the direct or indirect participation of the corporation in any tax shelter, 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, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

CHAPTER 413

An act to amend Section 7052 of the Health and Safety Code, relating to human remains.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 7052 of the Health and Safety Code is amended to read:

7052. (a) Every person who willfully mutilates, disinters, removes from the place of interment, or commits an act of sexual penetration on, or has sexual contact with, any remains known to be human, without

authority of law, is guilty of a felony. This section does not apply to any person who, under authority of law, removes the remains for reinterment, or performs a cremation.

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

(1) ''Sexual penetration'' means the unlawful penetration of the vagina or anus, however slight, by any part of a person's body or other object, or any act of sexual contact between the sex organs of a person and the mouth or anus of a dead body, or any oral copulation of a dead human body for the purpose of sexual arousal, gratification, or abuse.

(2) ''Sexual contact'' means any willful touching by a person of an intimate part of a dead human body for the purpose of sexual arousal, gratification, or abuse.

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 414

An act to amend Section 104339.6 of the Health and Safety Code, and to amend Section 4359 of the Welfare and Institutions Code, relating to spinal cord and traumatic brain injuries, and making an appropriation therefor.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 104339.6 of the Health and Safety Code is amended to read:

104339.6. This chapter shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends that date.

SEC. 2. Section 4359 of the Welfare and Institutions Code is amended to read:

4359. This chapter shall remain in effect until July 1, 2012, and as of that date is repealed, unless a later enacted statute enacted prior to July 1, 2012, extends or deletes that date.

CHAPTER 415

An act to amend, repeal, and add Section 24400 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 24400 of the Vehicle Code is amended to read:

24400. (a) During darkness, every motor vehicle other than a motorcycle, shall be equipped with at least two lighted headlamps, with at least one on each side of the front of the vehicle, and, except as to vehicles registered prior to January 1, 1930, they shall be located directly above or in advance of the front axle of the vehicle. The headlamps and every light source in any headlamp unit shall be located at a height of not more than 54 inches nor less than 22 inches.

(b) 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. 2. Section 24400 is added to the Vehicle Code, to read:

24400. (a) During darkness and inclement weather, a motor vehicle, other than a motorcycle, shall be equipped with at least two lighted headlamps, with at least one on each side of the front of the vehicle, and, except as to vehicles registered prior to January 1, 1930, they shall be located directly above or in advance of the front axle of the vehicle. The headlamps and every light source in any headlamp unit shall be located at a height of not more than 54 inches nor less than 22 inches.

(b) As used in subdivision (a), ''inclement weather'' is a weather condition that is either of the following:

(1) A condition that prevents a driver of a motor vehicle from clearly discerning a person or another motor vehicle on the highway from a distance of 1,000 feet.

(2) A condition requiring the windshield wipers to be in continuous use due to rain, mist, snow, fog, or other precipitation or atmospheric moisture.

(c) This section shall become operative on July 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 416

An act to add Section 17350.5 to the Corporations Code and to amend Sections 17941 and 17945 of the Revenue and Taxation Code, relating to limited liability companies.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 17350.5 is added to the Corporations Code, to read:

17350.5. (a) Notwithstanding any other provision of this division, if a domestic limited liability company has not conducted any business, only a majority of the members, or, if there are no members, the majority of the managers, if any, or if no members or managers, the person or a majority of the persons signing the articles of organization, may execute and acknowledge a certificate of cancellation of articles of organization, on a form prescribed by the Secretary of State, stating all of the following:

(1) The name of the domestic limited liability company and the Secretary of State's file number.

(2) That the certificate of cancellation is being filed within 12 months from the date the articles of organization were filed.

(3) That the limited liability company does not have any debts or other liabilities, except as provided in paragraph (4).

(4) That the tax liability of the limited liability company will be satisfied on a taxes-paid basis or that a person, limited liability company, or other business entity assumes the tax liability, if any, of the dissolving limited liability company as security for the issuance of a tax clearance certificate from the Franchise Tax Board and is responsible for additional taxes or fees, if any, that are assessed under the Revenue and

Taxation Code and become due after the date of the assumption of tax liability.

(5) That the final tax return has been filed with the Franchise Tax Board, as required under Part 10.2 (commencing with Section 18401) of Division 2 of the Revenue and Taxation Code.

(6) That the known assets of the limited liability company remaining after payment of, or adequately providing for, known debts and liabilities have been distributed to the persons entitled thereto or that the limited liability company acquired no known assets, as the case may be.

(7) That the limited liability company has not conducted any business from the time of the filing of the articles of organization.

(8) That a majority of the managers or members voted, or, if no managers or members, the person or a majority of the persons signing the articles of organization, voted to dissolve the limited liability company.

(9) If the limited liability company has received payments for interests from investors, that those payments have been returned to those investors.

(b) A certificate of cancellation executed and acknowledged pursuant to subdivision (a) shall be filed with the Secretary of State within 12 months from the date that the articles of organization were filed. The Secretary of State shall file the certificate of cancellation without the tax clearance certificate specified in Section 17945 of the Revenue and Taxation Code, and shall notify the Franchise Tax Board of the cancellation.

(c) Upon filing a certificate of cancellation pursuant to subdivision (a), a limited liability company shall be cancelled and its powers, rights, and privileges shall cease.

(d) A domestic limited liability company that filed articles of organization on or after January 1, 2004, and that meets all of the conditions described in subdivision (a) may file a certificate of cancellation under this section.

SEC. 2. 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, a 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 that 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 an 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.

(e) Notwithstanding anything in this section to the contrary, if the office of the Secretary of State files a certificate of cancellation pursuant to Section 17350.5 of the Corporations Code for any limited liability company, then paragraph (1) of subdivision (f) of Section 23153 shall apply to that limited liability company as if the limited liability company were properly treated as a corporation for that limited purpose only, and paragraph (2) of subdivision (f) of Section 23153 shall not apply. Nothing in this subdivision entitles a limited liability company to receive a reimbursement for any annual taxes or fees already paid.

SEC. 3. Section 17945 of the Revenue and Taxation Code is amended to read:

17945. No decree of dissolution, withdrawal, or cancellation shall be made and entered by any court, nor shall the county clerk of any county or the Secretary of State file any decree of dissolution, withdrawal, or cancellation or any other document by which the term of existence of the limited liability company shall be reduced or terminated, except as provided in subdivision (b) of Section 17350.5 of the Corporations Code, nor shall the Secretary of State file any certificate of the surrender or cancellation by a foreign limited liability company of its rights to do intrastate business in this state unless the limited liability company obtains from the Franchise Tax Board and files with the court, county clerk, or Secretary of State, as the case may be, a tax clearance certificate indicating that the Franchise Tax Board is satisfied from the available evidence that all taxes and fees imposed by this

chapter or all taxes imposed by Part 11 (commencing with Section 23001) have been paid or are secured by bond, deposit, or otherwise. Within 30 days after receiving a request for a certificate, the Franchise Tax Board shall either issue the certificate or notify the person requesting the certificate of the amount of tax or fees that must be paid or the amount of bond, deposit, or other security that must be furnished as a condition of issuing the certificate. The issuance of the certificate shall not relieve the taxpayer or any individual, bank, or corporation from liability for any taxes, fees, penalties, or interest imposed by this part or Part 11 (commencing with Section 23001). The Franchise Tax Board shall furnish a copy of the tax clearance certificate to the Secretary of State.

SEC. 4. The amendments to Section 17941 of the Revenue and Taxation Code made by this act shall apply to taxable years beginning on or after January 1, 2005.

CHAPTER 417

An act to amend Section 66602 of, and to repeal Sections 90450 and 90500 of, the Education Code, and to amend Section 10760 of the Public Contract Code, relating to the California State University.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 66602 of the Education Code is amended to read:

66602. (a) The board shall be composed of the following five ex officio members: the Governor, the Lieutenant Governor, the Superintendent of Public Instruction, the Speaker of the Assembly, and the person named by the trustees to serve as the Chancellor of the California State University; a representative of the alumni associations of the state university, selected for a two-year term by the alumni council, California State University, which representative shall not be an employee of the California State University during the two-year term; and 16 appointive members appointed by the Governor and subject to confirmation by two-thirds of the membership of the Senate.

(b) (1) Two students from the California State University, who shall have at least a junior year standing at the institutions they attend, and who remain in good standing as students during their respective terms, shall also be appointed by the Governor for two-year terms.

(2) In the selection of students as members of the board, the Governor shall appoint the students from lists of names of at least two, but not more than five, persons furnished by the governing board of any statewide student organization that represents the students of the California State University and the student body organizations of the campuses of the California State University. Any appointment to fill a vacancy of a student member shall be effective only for the remainder of the term of the person's office that became vacated.

(3) The term of office of one student member of the board shall commence on July 1 of an even-numbered year and expire on June 30 two years thereafter. The term of office of the other student member of the board shall commence on July 1 of an odd-numbered year and expire on June 30 two years thereafter. Notwithstanding paragraph (1), a student member who graduates from his or her college or university on or after January 1 of the second year of his or her term of office may serve the remainder of the term.

(4) During the first year of a student member's term, a student member shall be a member of the board and may attend all meetings of the board and its committees. At these meetings, a student member may fully participate in discussion and debate, but may not vote. During the second year of a student member's term, a student member may exercise the same right to attend meetings of the board, and its committees, and shall have the same right to vote as the members appointed pursuant to subdivision (a).

(5) Notwithstanding paragraph (4), if a student member resigns from office or a vacancy is otherwise created in that office during the second year of a student member's term, the remaining student member shall immediately assume the office created by the vacancy and all of the participation privileges of the second-year student member, including the right to vote, for the remainder of that term of office.

(c) (1) A faculty member from the California State University, who shall be tenured at the California State University campus at which he or she teaches, shall also be appointed by the Governor for a two-year term. In the selection of a faculty member as a member of the board, the Governor shall appoint the faculty member from a list of names of at least two persons furnished by the Academic Senate of the California State University.

(2) The faculty member of the board appointed by the Governor pursuant to this subdivision shall not participate on any subcommittee of the board responsible for collective bargaining negotiations.

(3) The term of office of the faculty member of the board shall commence on July 1, and shall expire on June 30 two years thereafter.

SEC. 1.5. Section 66602 of the Education Code is amended to read:

66602. (a) The board shall be composed of the following five ex officio members: the Governor, the Lieutenant Governor, the Superintendent of Public Instruction, the Speaker of the Assembly, and the person named by the trustees to serve as the Chancellor of the California State University; a representative of the alumni associations of the state university, selected for a two-year term by the alumni council, California State University, which representative shall not be an employee of the California State University during the two-year term; and 16 appointive members appointed by the Governor and subject to confirmation by two-thirds of the membership of the Senate.

(b) (1) Two students from the California State University, who shall have at least a junior year standing at the institutions they attend, and who remain in good standing as students during their respective terms, shall also be appointed by the Governor for two-year terms.

(2) In the selection of students as members of the board, the Governor shall appoint the students from lists of names of at least two, but not more than five, persons furnished by the governing board of any statewide student organization that represents the students of the California State University and the student body organizations of the campuses of the California State University. Any appointment to fill a vacancy of a student member shall be effective only for the remainder of the term of the person's office that became vacated.

(3) The term of office of one student member of the board shall commence on July 1 of an even-numbered year and expire on June 30 two years thereafter. The term of office of the other student member of the board shall commence on July 1 of an odd-numbered year and expire on June 30 two years thereafter. Notwithstanding paragraph (1), a student member who graduates from his or her college or university on or after January 1 of the second year of his or her term of office may serve the remainder of the term.

(4) During the first year of a student member's term, a student member shall be a member of the board and may attend all meetings of the board and its committees. At these meetings, a student member may fully participate in discussion and debate, but may not vote. During the second year of a student member's term, a student member may exercise the same right to attend meetings of the board, and its committees, and shall have the same right to vote as the members appointed pursuant to subdivision (a).

(5) Notwithstanding paragraph (4), if a student member resigns from office or a vacancy is otherwise created in that office during the second year of a student member's term, the remaining student member shall immediately assume the office created by the vacancy and all of the participation privileges of the second-year student member, including the right to vote, for the remainder of that term of office.

(c) (1) A faculty member from the California State University who shall be tenured at the California State University campus at which he or she teaches, shall also be appointed by the Governor for a two-year term. In the selection of a faculty member as a member of the board, the Governor shall appoint the faculty member from a list of names of at least two persons furnished by the Academic Senate of the California State University.

(2) The faculty member of the board appointed by the Governor pursuant to this subdivision shall not participate on any subcommittee of the board responsible for collective bargaining negotiations.

(3) The term of office of the faculty member of the board shall commence on July 1, and shall expire on June 30 two years thereafter.

(d) (1) A nonfaculty employee of the California State University covered by the Higher Education Employer-Employee Relations Act (Chapter 12 (commencing with Section 3560) of Division 4 of Title 1 of the Government Code) shall also be appointed by the Governor for a two-year term.

(2) The nonfaculty employee member of the board appointed by the Governor pursuant to this subdivision shall not participate on any subcommittee of the board responsible for collective bargaining negotiations.

(3) The term of office of the nonfaculty employee member of the board appointed pursuant to this subdivision shall commence on July 1, and shall expire on June 30 two years thereafter.

SEC. 2. Section 90450 of the Education Code is repealed.

SEC. 3. Section 90500 of the Education Code is repealed.

SEC. 4. Section 10760 of the Public Contract Code is amended to read:

10760. The trustees may require, and on contracts the estimated cost of which exceeds the value of a minor capital outlay project for which, pursuant to the first paragraph of Section 10108, the services of the Department of General Services are not required and a state agency or department is authorized to carry out its own project, the trustees shall require, from prospective bidders, answers to questions contained in a standard form of questionnaire and financial statement including a complete statement of the prospective bidder's financial ability and experience in performing public works projects. When completed, the questionnaire and financial statement shall be verified under oath by the bidder in the manner in which pleadings in civil actions are verified.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 66602 of the Education Code proposed by both this bill and AB 2849. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section

66602 of the Education Code, and (3) this bill is enacted after AB 2849, in which case Section 1 of this bill shall not become operative.

CHAPTER 418

An act to add Sections 149.4, 149.5, and 149.6 to the Streets and Highways Code, relating to transportation.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

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

(a) High-occupancy toll (HOT) lanes allow single-occupant vehicles to access a high-occupancy vehicle (HOV) lane during peak congestion periods in exchange for paying an electronically collected fee. HOT lane facilities have been implemented and proven successful on freeways in California and elsewhere.

(b) HOT lanes provide an additional choice for users on occasions when saving time is of value to them. Research has illustrated that utilizing an HOV lane for a fee with assured reliable time savings is valuable to persons across the income spectrum. The income profile of HOT lane users does not differ greatly from that of adjacent mixed-flow lanes.

(c) HOT lanes create an alternative mechanism for financing transportation projects. Revenue generated from HOT lanes is used for transit services, highway maintenance, and other improvement within the HOT lane corridor.

(d) By providing the consumer a choice of paying a direct user fee for utilizing the unused capacity of the transportation system during peak periods, HOT lanes establish an equitable means of assessing a fee that is directly related to the burden placed on the transportation system.

(e) Toll collection for HOT lanes should be entirely by electronic means, and in accordance with Section 27565 of the Streets and Highways Code, which requires the use of equipment that is interoperable with electronic toll collection systems currently operating in California.

(f) HOT lanes increase the efficiency of the transportation system by taking advantage of existing capacity without forfeiting the congestion mitigation and air quality benefits provided by HOV lanes.

(g) Revenue from HOT lane operations would be reinvested in projects and services that provide traffic congestion relief in the HOT lane corridor.

SEC. 2. Section 149.4 is added to the Streets and Highways Code, to read:

149.4. (a) (1) Notwithstanding Sections 149 and 30800 of this code, and Section 21655.5 of the Vehicle Code, the San Diego Association of Governments (SANDAG) may conduct, administer, and operate a value pricing and transit development demonstration program on a maximum of two transportation corridors in San Diego County.

(2) The program, under the circumstances described in subdivision (b), may direct and authorize the entry and use of high-occupancy vehicle lanes in corridors identified in paragraph (1) by single-occupant vehicles during peak periods, as defined by SANDAG, for a fee. The amount of the fee shall be established from time to time by SANDAG, and collected in a manner determined by SANDAG. A high-occupancy vehicle lane may only be operated as a high-occupancy toll (HOT) lane during the hours that the lane is otherwise restricted to use by high-occupancy vehicles.

(b) Implementation of the program shall ensure that Level of Service C, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, is maintained at all times in the high-occupancy vehicle lanes, except that subject to a written agreement between the department and SANDAG that is based on operating conditions of the high-occupancy vehicle lanes, Level of Service D shall be permitted on the high-occupancy vehicle lanes. If Level of Service D is permitted, the department and SANDAG shall evaluate the impacts of these levels of service of the high-occupancy vehicle lanes, and indicate any effects on the mixed-flow lanes. Continuance of Level of Service D operating conditions shall be subject to the written agreement between the department and SANDAG. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually, the department shall audit the level of service during peak traffic hours and report the results of that audit at meetings of the program management team.

(c) Single-occupant vehicles that are certified or authorized by SANDAG for entry into, and use of, the high-occupancy vehicle lanes identified in paragraph (1) of subdivision (a) are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) SANDAG shall carry out the program in cooperation with the department pursuant to a cooperative agreement that addresses all matters related to design, construction, maintenance, and operation of state highway system facilities in connection with the value pricing and

transit development demonstration program. With the assistance of the department, SANDAG shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles without adversely affecting other traffic on the state highway system.

(e) (1) Agreements between SANDAG, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the program. The agreements entered into pursuant to this section shall be consistent with agreements between the department and the United States Department of Transportation relating to this program and shall include clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, federal funds specifically allocated to SANDAG for the program by the federal government, or other funding sources that are not otherwise available to state agencies for transportation-related projects, for costs incurred in connection with the implementation or operation of the program.

(2) The revenue generated from the program shall be available to SANDAG for the direct expenses related to the operation (including collection and enforcement), maintenance, and administration of the demonstration program. Administrative expenses shall not exceed 3 percent of the revenues.

(3) All remaining revenue generated by the demonstration program shall be used in the corridor from which the revenue was generated exclusively for preconstruction, construction, and other related costs of high-occupancy vehicle facilities and the improvement of transit service, including, but not limited to, support for transit operations pursuant to an expenditure plan adopted by SANDAG.

(f) Not later than three years after SANDAG first collects revenues from any of the projects described in paragraph (1) of subdivision (a), SANDAG shall submit a report to the Legislature on its findings, conclusions, and recommendations concerning the demonstration program authorized by this section. The report shall include an analysis of the effect of the HOT lanes on the adjacent mixed-flow lanes and any comments submitted by the department and the Department of the California Highway Patrol regarding operation of the lane.

(g) The authority of SANDAG to conduct, administer, and operate a value pricing and transit development program on a transportation corridor pursuant to this section shall terminate on that corridor four years after SANDAG first collects revenues from the HOT lane project

on that corridor. SANDAG shall notify the department by letter of the date that revenues are first collected on that corridor.

SEC. 3. Section 149.5 is added to the Streets and Highways Code, to read:

149.5. (a) (1) Notwithstanding Sections 149 and 30800 of this code, and Section 21655.5 of the Vehicle Code, the Sunol Smart Carpool Lane Joint Powers Authority (SSCLJPA), consisting of the Alameda County Congestion Management Agency, Alameda County Transportation Improvement Authority, and the Santa Clara Valley Transportation Authority, may conduct, administer, and operate a value pricing high-occupancy vehicle program on the Sunol Grade segment of State Highway Route 680 (Interstate 680) in Alameda and Santa Clara Counties and the Alameda County Congestion Management Agency may conduct, administer, and operate a program on a corridor within Alameda County for a maximum of two transportation corridors in Alameda County pursuant to this section in coordination with the Metropolitan Transportation Commission and consistent with Section 21655.6 of the Vehicle Code.

(2) The program, under the circumstances described in subdivision (b), may direct and authorize the entry and use of the high-occupancy vehicle lanes in the corridors identified in paragraph (1) by single-occupant vehicles for a fee. The fee structure for each corridor shall be established from time to time by the administering agency. A high-occupancy vehicle lane may only be operated as a high-occupancy toll (HOT) lane during the hours that the lane is otherwise restricted to use by high-occupancy vehicles.

(3) The administering agency for each corridor shall enter into a cooperative agreement with the Bay Area Toll Authority to operate and manage the electronic toll collection system.

(b) Implementation of the program shall ensure that Level of Service C, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, is maintained at all times in the high-occupancy vehicle lanes, except that subject to a written agreement between the department and the administering agency that is based on operating conditions of the high-occupancy vehicle lanes, Level of Service D shall be permitted on the high-occupancy vehicle lanes. If Level of Service D is permitted, the department and the administering agency shall evaluate the impacts of these levels of service of the high-occupancy vehicle lanes, and indicate any effects on the mixed-flow lanes. Continuance of Level of Service D operating conditions shall be subject to the written agreement between the department and the administering agency. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually, the department shall audit the level of service during peak

traffic hours and report the results of that audit at meetings of the administering agency.

(c) Single-occupant vehicles that are certified or authorized by the administering agency for entry into, and use of, the high-occupancy vehicle lanes identified in paragraph (1) of subdivision (a) are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) The administering agency shall carry out the program in cooperation with the department pursuant to a cooperative agreement that addresses all matters related to design, construction, maintenance, and operation of state highway system facilities in connection with the value pricing high-occupancy vehicle program. With the assistance of the department, the administering agency shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles without adversely affecting other traffic on the state highway system.

(e) (1) Agreements between the administering agency, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the program. The agreements entered into pursuant to this section shall be consistent with agreements between the department and the United States Department of Transportation relating to programs of this nature. The agreements shall include clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes, which may include the use of video enforcement. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, or other funding sources that are not otherwise available to state agencies for transportation-related projects, for costs incurred in connection with the implementation or operation of the program.

(2) The revenue generated from the program shall be available to the administering agency for the direct expenses related to the operation (including collection and enforcement), maintenance, and administration of the demonstration program. Administrative expenses shall not exceed 3 percent of the revenues.

(3) All net revenue generated by the program that remains after payment of direct expenses pursuant to paragraph (2) shall be allocated pursuant to an expenditure plan adopted biennially by the administering agency for transportation purposes within the program area. The expenditure plan may include funding for the following:

(A) The construction of high-occupancy vehicle facilities, including the design, preconstruction, construction, and other related costs of the northbound Interstate 680 Sunol Smart Carpool Lane project.

(B) Transit capital and operations that directly serve the authorized corridors.

(f) Not later than three years after the administering agency first collects revenues from the program authorized by this section, the administering agency shall submit a report to the Legislature on its findings, conclusions, and recommendations concerning the demonstration program authorized by this section. The report shall include an analysis of the effect of the HOT lanes on the adjacent mixed-flow lanes and any comments submitted by the department and the Department of the California Highway Patrol regarding operation of the lane.

(g) The authority of the administering agency to conduct, administer, and operate a value pricing high-occupancy vehicle program pursuant to this section shall terminate on that corridor four years after the administering agency first collects revenues from the HOT lane project on that corridor. The administering agency shall notify the department by letter of the date that revenues are first collected on that corridor.

SEC. 4. Section 149.6 is added to the Streets and Highways Code, to read:

149.6. (a) Notwithstanding Sections 149 and 30800, and Section 21655.5 of the Vehicle Code, the Santa Clara Valley Transportation Authority (VTA) created by Part 12 (commencing with Section 100000) of the Public Utilities Code may conduct, administer, and operate a value pricing program on any two of the transportation corridors included in the high-occupancy vehicle lane system in Santa Clara County in coordination with the Metropolitan Transportation Commission and consistent with Section 21655.6 of the Vehicle Code.

(1) VTA, under the circumstances described in subdivision (b), may direct and authorize the entry and use of those high-occupancy vehicle lanes by single-occupant vehicles for a fee. The fee structure shall be established from time to time by the authority. The fee shall be collected in a manner determined by the authority. A high-occupancy vehicle lane may only be operated as a high-occupancy toll (HOT) lane during the hours that the lane is otherwise restricted to use by high-occupancy vehicles.

(2) VTA shall enter into a cooperative agreement with the Bay Area Toll Authority to operate and manage the electronic toll collection system.

(b) Implementation of the program shall ensure that Level of Service C, as measured by the most recent issue of the Highway Capacity Manual, as adopted by the Transportation Research Board, is maintained at all times in the high-occupancy vehicle lanes, except that subject to a written agreement between the department and VTA that is based on operating conditions of the high-occupancy vehicle lanes, Level of

Service D shall be permitted on the high-occupancy vehicle lanes. If Level of Service D is permitted, the department and VTA shall evaluate the impacts of these levels of service of the high-occupancy vehicle lanes, and indicate any effects on the mixed-flow lanes. Continuance of Level of Service D operating conditions shall be subject to the written agreement between the department and VTA. Unrestricted access to the lanes by high-occupancy vehicles shall be available at all times. At least annually, the department shall audit the level of service during peak traffic hours and report the results of that audit at meetings of the program management team.

(c) Single-occupant vehicles that are certified or authorized by the authority for entry into, and use of, the high-occupancy vehicle lanes in Santa Clara County are exempt from Section 21655.5 of the Vehicle Code, and the driver shall not be in violation of the Vehicle Code because of that entry and use.

(d) VTA shall carry out the program in cooperation with the department pursuant to a cooperative agreement that addresses all matters related to design, construction, maintenance, and operation of state highway system facilities in connection with the value pricing program. With the assistance of the department, VTA shall establish appropriate traffic flow guidelines for the purpose of ensuring optimal use of the express lanes by high-occupancy vehicles without adversely affecting other traffic on the state highway system.

(e) (1) Agreements between VTA, the department, and the Department of the California Highway Patrol shall identify the respective obligations and liabilities of those entities and assign them responsibilities relating to the program. The agreements entered into pursuant to this section shall be consistent with agreements between the department and the United States Department of Transportation relating to this program. The agreements shall include clear and concise procedures for enforcement by the Department of the California Highway Patrol of laws prohibiting the unauthorized use of the high-occupancy vehicle lanes, which may include the use of video enforcement. The agreements shall provide for reimbursement of state agencies, from revenues generated by the program, federal funds specifically allocated to the authority for the program by the federal government, or other funding sources that are not otherwise available to state agencies for transportation-related projects, for costs incurred in connection with the implementation or operation of the program.

(2) The revenues generated by the program shall be available to VTA for the direct expenses related to the operation (including collection and enforcement), maintenance, and administration of the program. The VTA's administrative costs in the operation of the program shall not exceed 3 percent of the revenues.

(3) All remaining revenue generated by the demonstration program shall be used in the corridor from which the revenues were generated exclusively for the preconstruction, construction, and other related costs of high-occupancy vehicle facilities and the improvement of transit service, including, but not limited to, support for transit operations pursuant to an expenditure plan adopted by the VTA.

(f) Not later than three years after VTA first collects revenues from any of the projects described in paragraph (1) of subdivision (a), VTA shall submit a report to the Legislature on its findings, conclusions, and recommendations concerning the demonstration program authorized by this section. The report shall include an analysis of the effect of the HOT lanes on adjacent mixed-flow lanes and any comments submitted by the department and the Department of the California Highway Patrol regarding operation of the lanes.

(g) The authority of VTA to conduct, administer, and operate a value pricing high-occupancy vehicle program on a transportation corridor pursuant to this section shall terminate on that corridor four years after VTA first collects revenues from the HOT lane project on that corridor. VTA shall notify the department by letter of the date that revenues are first collected on that corridor.

CHAPTER 419

An act to add Section 1040 to the Government Code, relating to state employees.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 1040 is added to the Government Code, to read:

1040. (a) The Department of Motor Vehicles may require fingerprint images and associated information from an employee or prospective employee whose duties include or would include any of the following:

(1) Access to confidential information in a database of the department.

(2) Access to confidential or sensitive information provided by a member of the public including, but not limited to, a credit card number or social security account number.

(3) Access to cash, checks, or other accountable items.

(4) Responsibility for the development or maintenance of a critical automated system.

(5) Making decisions regarding the issuance or denial of a license, endorsement, certificate, or indicia.

(b) The fingerprint images and associated information of an employee or prospective employee of the Department of Motor Vehicles whose duties include or would include those specified in subdivision (a), or any person who assumes those duties, may be furnished to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state or federal level convictions and state or federal level arrests for which the Department of Justice establishes that the applicant was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information, received by the Department of Justice, pursuant to this section, shall be forwarded to the Federal Bureau of Investigation by the Department of Justice.

(c) The Department of Justice shall respond to the Department of Motor Vehicles with information as provided under subdivision (p) of Section 11105 of the Penal Code.

(d) The Department of Motor Vehicles shall request subsequent arrest notification, from the Department of Justice, as provided under Section 11105.2 of the Penal Code, for applicants described in subdivision (a).

(e) The Department of Justice may assess a fee sufficient to cover the processing costs required under this section, as authorized pursuant to subdivision (e) of Section 11105 of the Penal Code.

(f) This section does not apply to an employee of the Department of Motor Vehicles whose appointment occurred prior to January 1, 2005.

(g) The Department of Motor Vehicles may investigate the criminal history of persons applying for employment in order to make a final determination of that person's fitness to perform duties that would include any of those specified in subdivision (a).

CHAPTER 420

An act to amend Sections 27315, 27360, 27360.5, 27361, 27362, and 27365 of the Vehicle Code, relating to vehicles.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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 a passenger vehicle, a motortruck, or a truck tractor, but does not include a motorcycle.

(2) For purposes of this section, a ''motor vehicle'' also means any farm labor vehicle, regardless of the 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 six years of age or over or weighing 60 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 six years of age or over or weighing 60 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 any other court-approved program 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.

SEC. 2. Section 27360 of the Vehicle Code, as added by Section 2 of Chapter 524 of the Statutes of 2003, 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 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 one of the following:

(1) Six years of age or older.

(2) Sixty pounds or more.

(b) (1) A driver may not transport on a highway a child in a motor vehicle, as defined in Section 27315, without 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 one of the following:

(A) Six years of age or older.

(B) Sixty pounds or more.

(2) 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 airbag if the child or ward is one of the following:

(A) Under one year of age.

(B) Less than 20 pounds.

(C) Riding in a rear-facing child passenger restraint system.

(d) (1) (A) 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).

SEC. 3. Section 27360.5 of the Vehicle Code is amended to read:

27360.5. (a) No parent or legal guardian, when present in a motor vehicle, as defined in Section 27315, may permit his or her child or ward who is six years of age or older, but less than 16 years of age, or who is less than six years of age and weighs 60 pounds or more to be transported upon a highway in the motor vehicle without properly securing the child or ward in an appropriate child passenger restraint system or safety belt meeting applicable federal motor vehicle safety standards.

(b) No driver may transport on a highway any child who is six years of age or older, but less than 16 years of age, or who is less than six years of age and weighs 60 pounds or more in a motor vehicle, as defined in Section 27315, without properly securing the child in a child passenger restraint system or safety belt meeting applicable federal motor vehicle safety standards. 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 child restraint education program that includes, but is not limited to, demonstration of the proper installation and use of child passenger restraint systems for children of all ages, and provides economically disadvantaged families with a child passenger restraint low-cost purchase or loaner program. Upon completion of the program, the defendant shall provide proof of participation in the program that includes an inspection of a child passenger restraint system that meets applicable federal safety standards. 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, at its discretion, require any defendant described under this section to attend an education program that includes demonstration of proper installation and use of child passenger restraint systems 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 at its discretion, require any defendant described under this section to attend an education program that includes demonstration of proper installation and use of child passenger restraint systems 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 county or city health departments where the violation occurred, to be used for an education program that includes, but is not limited to, the demonstration of proper installation and use of child passenger restraint systems for children of all ages and provides child restraints for loan or low-cost purchase.

(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).

SEC. 4. Section 27361 of the Vehicle Code is amended to read:

27361. A law enforcement officer reasonably suspecting a violation of Section 27360 or 27360.5, or both of those sections, may stop a vehicle transporting a child appearing to the officer to be within the age or weight specified in Section 27360 or 27360.5. The officer may issue a notice to appear for a violation of Section 27360 or 27360.5.

SEC. 5. Section 27362 of the Vehicle Code is amended to read:

27362. (a) A manufacturer, wholesaler, or retailer shall not sell, offer for sale, or install in a motor vehicle, a child passenger restraint system that does not conform to all applicable federal motor vehicle safety standards on the date of manufacture. Responsibility for compliance with this section shall rest with the individual selling the system, offering the system for sale, or installing the system. A person who violates this section is guilty of a misdemeanor and shall be punished as follows:

(1) Upon a first conviction, by a fine not exceeding four hundred dollars ($400), or by imprisonment in the county jail for a period of not more than 90 days, or both.

(2) Upon a second or subsequent conviction, by a fine not exceeding one thousand dollars ($1,000), or by imprisonment in the county jail for a period of not more than 180 days, or both.

(b) The fines collected for a violation of this section shall be allocated as follows:

(1) (A) Sixty percent to the county or city health department where the violation occurred, to be used for a child passenger restraint low-cost purchase or loaner program which shall include, but not be limited to, education on the proper installation and use of a child passenger restraint system. The county health department shall designate a coordinator to facilitate the creation of a special account and to develop a relationship with the superior court to facilitate the transfer of funds to the program. The county may contract for the implementation of the program. Prior to obtaining possession of a child passenger restraint system pursuant to this section, a person shall receive information relating to the importance of utilizing that system.

As the proceeds from fines become available, county health departments shall prepare and maintain a listing of all child passenger restraint low-cost purchase or loaner programs in their counties, including a semiannual verification that all programs listed are in existence. Each county shall forward the listing to the Office of Traffic Safety in the Business, Transportation and Housing Agency and the courts, birthing centers, community child health and disability prevention programs, and county hospitals in that county, who shall make the listing available to the public. The Office of Traffic Safety shall maintain a listing of all of the programs in the state.

(2) Twenty-five percent to the county for the administration of the program.

(3) Fifteen percent to the city, to be deposited in its general fund except that, if the violation occurred in an unincorporated area, this amount shall be allocated to the county for purposes of paragraph (1).

SEC. 6. Section 27365 of the Vehicle Code is amended to read:

27365. (a) (1) Every car rental agency in California shall inform each of its customers of Section 27360 by posting, in a place conspicuous to the public in each established place of business of the agency, a notice not smaller than 15 by 20 inches which states the following: ''CALIFORNIA LAW REQUIRES ALL CHILDREN UNDER 6 YEARS OF AGE WHO WEIGH LESS THAN 60 POUNDS TO BE TRANSPORTED IN THE BACK SEAT OF THE VEHICLE IN A CHILD RESTRAINT SYSTEM. THIS AGENCY IS REQUIRED TO PROVIDE FOR RENTAL A CHILD RESTRAINT SYSTEM IF YOU DO NOT HAVE A CHILD RESTRAINT SYSTEM YOURSELF.''

(2) The posted notice specified in paragraph (1) is not required if the car rental agency's place of business is located in a hotel that has a business policy prohibiting the posting of signs or notices in any area of the hotel. In that case, a car rental agency shall furnish a written notice to each customer that contains the same information as required for the posted notice.

(b) Every car rental agency in California shall have available for, and shall, upon request, provide for rental to, adults traveling with children under six years of age, child passenger restraint systems that are certified by the manufacturer to meet applicable federal motor vehicle safety standards for use by children weighing 60 pounds or less, are in good and safe condition, with no missing original parts, and are not older than five years.

(c) A violation of this section is an infraction punishable by a fine of one hundred dollars ($100).

CHAPTER 421

An act to amend Section 80172 of the Food and Agricultural Code, relating to desert species.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 80172 of the Food and Agricultural Code is amended to read:

80172. A person violating any provision of this division is guilty of a misdemeanor punishable by a fine of not less than one thousand five hundred dollars ($1,500), nor more than two thousand five hundred dollars ($2,500), for each violation or by imprisonment in the county jail not to exceed one year, or both, and each violation constitutes a separate offense.

CHAPTER 422

An act to add and repeal Chapter 7 (commencing with Section 1963) of Division 2.5 of the Streets and Highways Code, and to amend Sections 385.5, 21250, 21251, and 21260 of the Vehicle Code, relating to neighborhood electric vehicles.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Chapter 7 (commencing with Section 1963) is added to Division 2.5 of the Streets and Highways Code, to read:

CHAPTER 7. NEIGHBORHOOD ELECTRIC VEHICLE TRANSPORTATION PLAN

1963. It is the intent of the Legislature, in enacting this chapter, to authorize the City of Lincoln and the City of Rocklin in the County of Placer to establish a neighborhood electric vehicle (NEV) transportation plan for a plan area in the city. It is the further intent of the Legislature that this transportation plan be designed and developed to best serve the functional travel needs of the plan area, to have the physical safety of the NEV driver's person and property as a major planning component, and to have the capacity to accommodate NEV drivers of every legal age and range of skills. It is the intent of the Legislature, in enacting this chapter, to encourage discussions between the Legislature, the Department of Motor Vehicles, and the California Highway Patrol regarding the adoption of a new classification for licensing motorists who use neighborhood electric vehicles.

1963.1. The following definitions apply to this chapter:

(a) ''Plan area'' means that territory under the jurisdiction of the City of Lincoln or the City of Rocklin designated by the city for a NEV transportation plan, including the privately owned land of any owner that consents to its inclusion in the plan.

(b) ''Neighborhood electric vehicle'' or ''NEV'' means a low-speed vehicle as defined by Section 385.5 of the Vehicle Code.

(c) ''NEV lanes'' means all publicly owned facilities that provide for NEV travel including roadways designated by signs or permanent markings which are shared with pedestrians, bicyclists, and other motorists in the plan area.

(d) ''Speed-modified golf cart'' means a golf cart that is modified to meet the safety requirements of Section 571.500 of Title 49 of the Code of Federal Regulations.

1963.2. (a) The City of Lincoln and the City of Rocklin may, by ordinance or resolution, adopt a NEV transportation plan.

(b) The transportation plan shall have received a prior review and the comments of the appropriate transportation planning agency designated under subdivision (a) or (b) of Section 29532 of the Government Code and any agency having traffic law enforcement responsibilities in the City of Lincoln or the City of Rocklin.

(c) The transportation plan may include the use of a state highway, or any crossing of the highway, subject to the approval of the Department of Transportation.

1963.3. The transportation plan shall include, but is not limited to, all of the following elements:

(a) Route selection, which includes a finding that the route will accommodate NEVs without an adverse impact upon traffic safety, and will consider, among other things, the travel needs of commuters and other users.

(b) Transportation interfacing, which shall include, but not be limited to, coordination with other modes of transportation so that a NEV driver may employ multiple modes of transportation in reaching a destination in the plan area.

(c) Citizens and community involvement in planning.

(d) Flexibility and coordination with long-range transportation planning.

(e) Provision for NEV related facilities including, but not limited to, special access points and NEV crossings.

(f) Provisions for parking facilities, including, but not limited to, community commercial centers, golf courses, public areas, parks, and other destination locations.

(g) Provisions for special paving, road markings, signage and striping for NEV travel lanes, road crossings, parking, and circulation.

(h) Provisions for NEV electrical charging stations.

(i) NEV lanes for the purposes of the transportation plan shall be classified as follows:

(1) Class I NEV routes provide for a completely separate right-of-way for the use of NEVs.

(2) Class II NEV routes provide for a separate striped lane adjacent to roadways with speed limits of 55 miles per hour or less.

(3) Class III NEV routes provide for shared use by NEVs with conventional vehicle traffic on streets with a posted speed limit of 35 miles per hour or less.

1963.4. If the City of Lincoln or the City of Rocklin adopts a NEV transportation plan, it shall do both of the following:

(a) Establish minimum general design criteria for the development, planning, and construction of separated NEV lanes, including, but not limited to, the design speed of the facility, the space requirements of the NEV, and roadway design criteria.

(b) In cooperation with the department, establish uniform specifications and symbols for signs, markers, and traffic control devices to control NEV traffic; to warn of dangerous conditions, obstacles, or hazards; to designate the right-of-way as between NEVs, other vehicles, and bicycles; to state the nature and destination of the NEV lane; and to warn pedestrians, bicyclists, and motorists of the presence of NEV traffic.

1963.5. If the City of Lincoln or the City of Rocklin adopts a NEV transportation plan, each city may do the following:

(a) Acquire, by dedication, purchase, or condemnation, real property, including easements or rights-of-way, to establish NEV lanes.

(b) Establish a NEV transportation plan as authorized by this chapter.

1963.6. If the City of Lincoln or the City of Rocklin adopts a NEV transportation plan, each city shall also adopt all of the following as part of the plan:

(a) NEVs eligible to use NEV lanes shall meet the safety requirements for low-speed vehicles as set forth in Section 571.500 of Title 49 of the Code of Federal Regulations.

(b) A permit process for golf carts that requires speed-modified golf carts to meet minimum design criteria adopted pursuant to subdivision (a). The permit process may include, but not be limited to, permit posting, permit renewal, operator education, and other related matters.

(c) Minimum safety criteria for NEV operators, including, but not limited to, requirements relating to NEV maintenance and NEV safety. Operators shall be required to possess a valid California driver's license and to comply with the financial responsibility requirements established pursuant to Chapter 1 (commencing with Section 16000) of Division 7.

(d) (1) Restrictions limiting the operation of NEVs to separated NEV lanes on those roadways identified in the transportation plan, and

allowing only those NEVs and speed-modified golf carts that meet the safety equipment requirements specified in the plan to be operated on separated NEV lanes of approved roadways in the plan area.

(2) Any person operating a NEV in the plan area in violation of this subdivision is guilty of an infraction punishable by a fine not exceeding one hundred dollars ($100).

1963.7. (a) If the City of Lincoln or the City of Rocklin adopts a NEV transportation plan pursuant to this chapter, the cities shall jointly submit a report to the Legislature on or before January 1, 2008, in consultation with the Department of Transportation, the Department of the California Highway Patrol, and local law enforcement agencies.

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

(1) A description of all NEV transportation plans and their elements that have been authorized up to that time.

(2) An evaluation of the effectiveness of the NEV transportation plans, including their impact on traffic flows and safety.

(3) A recommendation as to whether this chapter should be terminated, continued in existence applicable solely to the City of Lincoln and the City of Rocklin in the County of Placer, or expanded statewide.

1963.8. 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. 2. Section 385.5 of the Vehicle Code is amended to read:

385.5. A ''low-speed vehicle'' is a motor vehicle, other than a motor truck, having four wheels on the ground and an unladen weight of 1,800 pounds or less, that is capable of propelling itself at a minimum speed of 20 miles per hour and a maximum speed of 25 miles per hour, on a paved level surface. For the purposes of this section, a ''low-speed vehicle'' is not a golf cart, except when operated pursuant to Section 21115 or 21115.1. A ''low-speed vehicle'' is also known as a ''neighborhood electric vehicle.''

SEC. 3. Section 21250 of the Vehicle Code is amended to read:

21250. For the purposes of this article, a low-speed vehicle means a vehicle as defined in Section 385.5. A ''low-speed vehicle'' is also known as a ''neighborhood electric vehicle.''

SEC. 4. Section 21251 of the Vehicle Code is amended to read:

21251. Except as provided in Sections 1963 to 1963.8, inclusive, of the Streets and Highways Code, and Sections 4023, 21115, and 21115.1, a low-speed vehicle is subject to all the provisions applicable to a motor vehicle, and the driver of a low-speed vehicle is subject to all the provisions applicable to the driver of a motor vehicle or other vehicle, when applicable, by this code or any other code, with the exception of those provisions which, by their very nature, can have no application.

SEC. 5. Section 21260 of the Vehicle Code is amended to read:

21260. (a) Except as provided in paragraph (1) of subdivision (b), or in an area where a neighborhood electric vehicle transportation plan has been adopted pursuant to Chapter 7 (commencing with Section 1963) of Division 2.5 of the Streets and Highways Code, the operator of a low-speed vehicle shall not operate the vehicle on any roadway with a speed limit in excess of 35 miles per hour.

(b) (1) The operator of a low-speed vehicle may cross a roadway with a speed limit in excess of 35 miles per hour if the crossing begins and ends on a roadway with a speed limit of 35 miles per hour or less and occurs at an intersection of approximately 90 degrees.

(2) Notwithstanding paragraph (1), the operator of a low-speed vehicle shall not traverse an uncontrolled intersection with any state highway unless that intersection has been approved and authorized by the agency having primary traffic enforcement responsibilities for that crossing by a low-speed vehicle.

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 423

An act to amend Section 7097 of, and to add Section 7099 to, the Government Code, relating to economic development.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 7097 of the Government Code is amended to read:

7097. (a) The Department of Housing and Community Development shall rank applicant communities and shall designate the first ranking community whose governing body is applying as a community to be designated as a targeted tax area which meets at least four of the five following criteria:

(1) The average unemployment rate in the applicant community exceeded 7.5 percent in 1995.

(2) The average unemployment rate in the applicant community exceeded 7.5 percent in 1996.

(3) The median family income in the applicant community does not exceed thirty-two thousand seven hundred dollars ($32,700).

(4) The percentage of persons in the applicant community below the poverty level is at least 17.5 percent.

(5) The applicant community ranks in the top quartile, among California counties, in the percentage of population receiving Aid for Families with Dependent Children benefits, based on the Cash Grant Caseload Movement and Expenditures Report, July 1995 to June 1996.

(b) For purposes of applying any provision of the Revenue and Taxation Code, any targeted tax area designated pursuant to this section shall not be considered an enterprise zone designated pursuant to Chapter 12.8 (commencing with Section 7070).

(c) Except as provided in subdivision (e), the designation as a targeted tax area pursuant to this section shall be binding for a period of 15 years, commencing January 1, 1998.

(d) Only one targeted tax area shall be designated by the department, and a renewed or replacement designation shall not be made after the initial designation expires or is revoked.

(e) An audit of the program's operation shall be made by the department on a periodic basis with the cooperation of the local governing board. If the department determines that the local jurisdiction is not complying with the terms of the memorandum of understanding, the department shall provide written notice of the program deficiencies and the governing body shall be given six months to correct the deficiencies. If the deficiencies are not corrected, the designation shall be revoked.

(f) A county and any cities within the county may apply jointly as a community if the combination of the jurisdictions meets the criteria.

SEC. 2. Section 7099 is added to the Government Code, to read:

7099. (a) The Department of Housing and Community Development may approve a proposed expansion of targeted tax area subject to the following conditions:

(1) The governing body of each city and county in which the targeted tax area is located approves an ordinance or resolution approving the proposed expansion of the area.

(2) The department determines that the proposed additional territory meets the criteria specified in subdivision (a) of Section 7097 to the same extent as the existing territory of the targeted tax area.

(3) The proposed expansion, in combination with any previous expansions of the targeted tax area, does not exceed 15 percent of the size of the area on the date of original designation.

(4) The expansion area is contiguous to the targeted tax area.

(5) The expansion meets the criteria established in paragraphs (1), (2), and (3) of subdivision (b) of Section 7074.

(b) The department shall respond in writing to any application for a proposed expansion of the targeted tax area within 90 days of the date on which the application is deemed complete.

SEC. 3. The Tulare County Economic Development Corporation is requested to make a report to the Legislature on or before January 1, 2008, as to the following:

(a) The total number of additional jobs created by the expansion of the targeted tax area by this act.

(b) The number of taxpayers, including subsidiaries, that claim tax incentives for doing business within the targeted tax area.

CHAPTER 424

An act to amend Section 13146.1 of, and to add and repeal Sections 12606.1, 13188.4, and 13197.6 of, the Health and Safety Code, relating to fire protection.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 12606.1 is added to the Health and Safety Code, to read:

12606.1. (a) If the State Fire Marshal or his or her designee determines that the public interest and public welfare will be adequately served by permitting a person licensed under this chapter to pay a monetary penalty to the State Fire Marshal in lieu of an actual license suspension, the State Fire Marshal or his or her designee may, on the petition of the licensee, stay the execution of all or part of the suspension if all of the following conditions are met:

(1) The violation that is the cause for the suspension did not pose, or have the potential to pose, a significant threat or risk of harm to the public.

(2) The licensee pays a monetary penalty.

(3) The licensee does not incur any other cause for disciplinary action within a period of time specified by the State Fire Marshal or his or her designee.

In making the determination, the State Fire Marshal or his or her designee shall consider the seriousness of the violation, the violator's record of compliance with the law, the impact of the determination on the licensee, the licensee's employees or customers, and other relevant factors.

(b) The State Fire Marshal or his or her designee may exercise the discretion granted under this section either with respect to a suspension ordered by a decision after a contested hearing on an accusation against the licensee or by stipulation with the licensee after the filing of an accusation, but prior to the rendering of a decision based upon the accusation. In either case, the terms and conditions of the disciplinary action against the licensee shall be made part of a formal decision of the State Fire Marshal or his or her designee.

(c) If a licensee fails to pay the monetary penalty in accordance with the terms and conditions of the decision of the State Fire Marshal or his or her designee, the State Fire Marshal or his or her designee may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the licensee shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the State Fire Marshal under the terms of the decision.

(d) The amount of the monetary penalty payable under this section shall not exceed two hundred fifty dollars ($250) for each day of suspension stayed nor a total of ten thousand dollars ($10,000) per decision regardless of the number of days of suspension stayed under the decision.

(e) Any monetary penalty received pursuant to this section shall be deposited in the State Fire Marshal Licensing and Certification Fund.

(f) The State Fire Marshal shall make available to the public no later than March 1, 2007, data showing the percentage of enforcement actions taken pursuant to this article that resulted in license suspension or the assessment of monetary penalties pursuant to this section for the calendar years 2005 and 2006, as compared to calendar years 2003 and 2004.

(g) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 2. Section 13146.1 of the Health and Safety Code is amended to read:

13146.1. (a) Notwithstanding the provisions of Section 13146, the State Fire Marshal, or the State Fire Marshal's authorized representative, shall inspect every jail or place of detention for persons charged with or

convicted of a crime, unless the chief of any city or county fire department or fire protection district, or that chief's authorized representative, indicates in writing to the State Fire Marshal that inspections of jails or places of detention, therein, shall be conducted by the chief, or the chief's authorized representative and submits the reports as required in subdivision (c).

(b) The inspections shall be made at least once every two years for the purpose of enforcing the regulations adopted by the State Fire Marshal, pursuant to Section 13143, and the minimum standards pertaining to fire and life safety adopted by the Board of Corrections, pursuant to Section 6030 of the Penal Code.

(c) Reports of the inspections shall be submitted to the official in charge of the facility, the local governing body, the State Fire Marshal, and the Board of Corrections within 30 days of the inspections.

SEC. 3. Section 13188.4 is added to the Health and Safety Code, to read:

13188.4. (a) If the State Fire Marshal or his or her designee determines that the public interest and public welfare will be adequately served by permitting a person who has a license issued pursuant to Section 13165 or a certificate of registration issued pursuant to Section 13178 to pay a monetary penalty to the State Fire Marshal in lieu of a license or certificate of registration suspension, the State Fire Marshal or his or her designee may, on the petition of the holder of a license or certificate of registration, stay the execution of all or part of the suspension if all of the following conditions are met:

(1) The violation that is the cause for the suspension did not pose, or have the potential to pose, a significant threat or risk of harm to the public.

(2) The holder of the license or certificate of registration pay a monetary penalty.

(3) The holder of the license or certificate of registration does not incur any other cause for disciplinary action within a period of time specified by the State Fire Marshal or his or her designee.

In making the determination, the State Fire Marshal or his or her designee shall consider the seriousness of the violation, the violator's record of compliance with the law, the impact of the determination on the violator, the violator's employees or customers, and other relevant factors.

(b) The State Fire Marshal or his or her designee may exercise the discretion granted under this section either with respect to a suspension ordered by a decision after a contested hearing on an accusation against the holder of the license or certificate of registration or by stipulation with the holder of the license or certificate of registration after the filing of an accusation, but prior to the rendering of a decision based upon the

accusation. In either case, the terms and conditions of the disciplinary action against the holder of the license or certificate of registration shall be made part of a formal decision of the State Fire Marshal or his or her designee.

(c) If a holder of the license or certificate of registration fails to pay the monetary penalty in accordance with the terms and conditions of the decision of the State Fire Marshal or his or her designee, the State Fire Marshal or his or her designee may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the holder of the license or certificate of registration shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the State Fire Marshal under the terms of the decision.

(d) The amount of the monetary penalty payable under this section shall not exceed two hundred fifty dollars ($250) for each day of suspension stayed nor a total of ten thousand dollars ($10,000) per decision regardless of the number of days of suspension stayed under the decision.

(e) Any monetary penalty received pursuant to this section shall be deposited in the State Fire Marshal Licensing and Certification Fund.

(f) The State Fire Marshal shall make available to the public no later than March 1, 2007, data showing the percentage of enforcement actions taken pursuant to this article that resulted in license or certificate suspension or the assessment of monetary penalties pursuant to this section for the calendar years 2005 and 2006, as compared to calendar years 2003 and 2004.

(g) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

SEC. 4. Section 13197.6 is added to the Health and Safety Code, to read:

13197.6. (a) If the State Fire Marshal or his or her designee determines that the public interest and public welfare will be adequately served by permitting a person licensed under this chapter to pay a monetary penalty to the State Fire Marshal in lieu of an actual license suspension, the State Fire Marshal or his or her designee may, on the petition of the licensee, stay the execution of all or part of the suspension if all of the following conditions are met:

(1) The violation that is the cause for the suspension did not pose, or have the potential to pose, a significant threat or risk of harm to the public.

(2) The licensee pays a monetary penalty.

(3) The licensee does not incur any other cause for disciplinary action within a period of time specified by the State Fire Marshal or his or her designee.

In making the determination, the State Fire Marshal or his or her designee shall consider the seriousness of the violation, the violator's record of compliance with the law, the impact of the determination on the licensee, the licensee's employees or customers, and other relevant factors.

(b) The State Fire Marshal or his or her designee may exercise the discretion granted under this section either with respect to a suspension ordered by a decision after a contested hearing on an accusation against the licensee or by stipulation with the licensee after the filing of an accusation, but prior to the rendering of a decision based upon the accusation. In either case, the terms and conditions of the disciplinary action against the licensee shall be made part of a formal decision of the State Fire Marshal or his or her designee.

(c) If a licensee fails to pay the monetary penalty in accordance with the terms and conditions of the decision of the State Fire Marshal or his or her designee, the State Fire Marshal or his or her designee may, without a hearing, order the immediate execution of all or any part of the stayed suspension in which event the licensee shall not be entitled to any repayment nor credit, prorated or otherwise, for money paid to the State Fire Marshal under the terms of the decision.

(d) The amount of the monetary penalty payable under this section shall not exceed two hundred fifty dollars ($250) for each day of suspension stayed nor a total of ten thousand dollars ($10,000) per decision regardless of the number of days of suspension stayed under the decision.

(e) Any monetary penalty received pursuant to this section shall be deposited in the State Fire Marshal Licensing and Certification Fund.

(f) The State Fire Marshal shall make available to the public no later than March 1, 2007, data showing the percentage of enforcement actions taken pursuant to this article that resulted in license or certificate suspension or the assessment of monetary penalties pursuant to this section for the calendar years 2005 and 2006, as compared to calendar years 2003 and 2004.

(g) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

CHAPTER 425

An act to amend Section 6609.1 of the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 9, 2004. Filed with
Secretary of State September 9, 2004.]

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

SECTION 1. Section 6609.1 of the Welfare and Institutions Code is amended to read:

6609.1. (a) (1) When the State Department of Mental Health makes a recommendation to the court for community outpatient treatment for any person committed as a sexually violent predator, or when a person who is committed as a sexually violent predator pursuant to this article has petitioned a court pursuant to Section 6608 for conditional release under supervision and treatment in the community pursuant to a conditional release program, or has petitioned a court pursuant to Section 6608 for subsequent unconditional discharge, and the department is notified, or is aware, of the filing of the petition, and when a community placement location is recommended or proposed, the department shall notify the sheriff or chief of police, or both, the district attorney, or the county's designated counsel, that have jurisdiction over the following locations:

(A) The community in which the person may be released for community outpatient treatment.

(B) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The department shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The department shall also notify the Department of Justice.

(3) The notice shall be given when the department or its designee makes a recommendation under subdivision (e) of Section 6608 or proposes a placement location without making a recommendation, or when any other person proposes a placement location to the court and the department or its designee is made aware of the proposal.

(4) The notice shall be given at least 15 days prior to the department's submission of its recommendation to the court in those cases in which the department recommended community outpatient treatment under Section 6607, or in which the department or its designee is recommending or proposing a placement location, or in the case of a petition or placement proposal by someone other than the department or its designee, within 48 hours after becoming aware of the petition or placement proposal.

(5) The notice shall state that it is being made under this section and include all of the following information concerning each person committed as a sexually violent predator who is proposed or is petitioning to receive outpatient care in a conditional release program in that city or county:

(A) The name, proposed placement address, date of commitment, county from which committed, proposed date of placement in the conditional release program, fingerprints, and a glossy photograph no smaller than $3\ 1/8$ X $3\ 1/8$ inches in size, or clear copies of the fingerprints and photograph.

(B) The date, place, and time of the court hearing at which the location of placement is to be considered and a proof of service attesting to the notice's mailing in accordance with this subdivision.

(C) A list of agencies that are being provided this notice and the addresses to which the notices are being sent.

(b) Those agencies receiving the notice referred to in paragraphs (1) and (2) of subdivision (a) may provide written comment to the department and the court regarding the impending release, placement, location, and conditions of release. All community agency comments shall be combined and consolidated. In addition, a single agency in the community of the specific proposed or recommended placement address may suggest appropriate, alternative locations for placement within that community. The State Department of Mental Health shall issue a written statement to the commenting agencies and to the court within 10 days of receiving the written comments with a determination as to whether to adjust the release location or general terms and conditions, and explaining the basis for its decision. In lieu of responding to the individual community agencies or individuals, the department's statement responding to the community comment shall be in the form of a public statement.

(c) The agencies' comments and department's statements shall be considered by the court which shall, based on those comments and statements, approve, modify, or reject the department's recommendation or proposal regarding the community or specific address to which the person is scheduled to be released or the conditions that shall apply to the release if the court finds that the department's recommendation or proposal is not appropriate.

(d) (1) When the State Department of Mental Health makes a recommendation to pursue recommitment, makes a recommendation not to pursue recommitment, or seeks a judicial review of commitment status pursuant to subdivision (f) of Section 6605, of any person committed as a sexually violent predator, it shall provide written notice of that action to the sheriff or chief of police, or both, and to the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person maintained his or her last legal residence as defined by Section 3003 of the Penal Code.

(B) The community in which the person will probably be released, if recommending not to pursue recommitment.

(C) The county that filed for the person's civil commitment pursuant to this article.

(2) The State Department of Mental Health shall also notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections, if the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 3000) of Chapter 8 of Title 1 of Part 3 of the Penal Code. The State Department of Mental Health shall also notify the Department of Justice. The notice shall be made at least 15 days prior to the department's submission of its recommendation to the court.

(3) Those agencies receiving the notice referred to in this subdivision shall have 15 days from receipt of the notice to provide written comment to the department regarding the impending release. Those comments shall be considered by the department, which may modify its decision regarding the community in which the person is scheduled to be released, based on those comments.

(e) (1) If the court orders the release of a sexually violent predator, the court shall notify the Sexually Violent Predator Parole Coordinator of the Department of Corrections. The Department of Corrections shall notify the Department of Justice, the State Department of Mental Health, the sheriff or chief of police or both, and the district attorney, that have jurisdiction over the following locations:

(A) The community in which the person is to be released.

(B) The community in which the person maintained his or her last legal residence as defined in Section 3003 of the Penal Code.

(2) The Department of Corrections shall make the notifications required by this subdivision regardless of whether the person released will be serving a term of parole after release by the court.

(f) If the person is otherwise subject to parole pursuant to Article 1 (commencing with Section 300) of Chapter 8 of Title 1 of Part 3 of the Penal Code, to allow adequate time for the Department of Corrections to make appropriate parole arrangements upon release of the person, the person shall remain in physical custody for a period not to exceed 72 hours or until parole arrangements are made by the Sexually Violent Predator Parole Coordinator of the Department of Corrections, whichever is sooner. To facilitate timely parole arrangements, notification to the Sexually Violent Predator Parole Coordinator of the Department of Corrections of the pending release shall be made by telephone or facsimile and, to the extent possible, notice of the possible

release shall be made in advance of the proceeding or decision determining whether to release the person.

(g) The notice required by this section shall be made whether or not a request has been made pursuant to Section 6609.

(h) The time limits imposed by this section are not applicable when the release date of a sexually violent predator has been advanced by a judicial or administrative process or procedure that could not have reasonably been anticipated by the State Department of Mental Health and where, as the result of the time adjustments, there is less than 30 days remaining on the commitment before the inmate's release, but notice shall be given as soon as practicable.

(i) In the case of any subsequent community placement or change of community placement of a conditionally released sexually violent predator, notice required by this section shall be given under the same terms and standards as apply to the initial placement, except in the case of an emergency where the sexually violent predator must be moved to protect the public safety or the safety of the sexually violent predator. In the case of an emergency, the notice shall be given as soon as practicable, and the affected communities may comment on the placement as described in subdivision (b).

(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 426

An act to amend Sections 3013, 3014, 3016, 3017, 3018, 3019, 3023, 3027, 3040, 3042, 3044, 3045, 3054, 3059, 3070, 3076, and 3125 of, to add Sections 3003, 3004, 3005, 3006, 3025.1, 3025.2, 3025.7, 3028, 3041.1, and 3046 to, to repeal Sections 3012, 3015, 3020, 3021, 3022, 3023.1, 3026.5, 3027.5, 3029, 3047, 3050, and 3052 of, and to repeal and add Sections 3000, 3055, and 3075 of, the Business and Professions Code, relating to healing arts.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 3000 of the Business and Professions Code is repealed.

SEC. 2. Section 3000 is added to the Business and Professions Code, to read:

3000. This chapter constitutes the chapter on optometry. It shall be known and may be cited as the Optometry Practice Act.

SEC. 3. Section 3003 is added to the Business and Professions Code, to read:

3003. As used in this chapter, ''optometrist'' means a person who is licensed to practice optometry in this state under the authority of this chapter.

SEC. 4. Section 3004 is added to the Business and Professions Code, to read:

3004. As used in this chapter, ''board'' means the State Board of Optometry.

SEC. 5. Section 3005 is added to the Business and Professions Code, to read:

3005. As used in this chapter, ''place of practice'' means any location where optometry is practiced.

SEC. 6. Section 3006 is added to the Business and Professions Code, to read:

3006. As used in this chapter, the term ''advertise'' and any of its variants include the use of a newspaper, magazine, or other publication, book, notice, circular, pamphlet, letter, handbill, poster, bill, sign, placard, card, label, tag, window display, store sign, radio announcement, or any other means or methods now or hereafter employed to bring to the attention of the public the practice of optometry or the prescribing, fitting, or sale, in connection therewith, of lenses, frames, or other accessories or appurtenances.

SEC. 7. Section 3012 of the Business and Professions Code is repealed.

SEC. 8. Section 3013 of the Business and Professions Code is amended to read:

3013. (a) Each member of the board shall hold office for a term of four years, and shall serve until the appointment and qualification of his or her successor or until one year shall have elapsed since the expiration of the term for which he or she was appointed, whichever first occurs.

(b) Vacancies occurring shall be filled by appointment for the unexpired term.

(c) The Governor shall appoint three of the public members and the six members qualified as provided in Section 3011. The Senate Committee on Rules and the Speaker of the Assembly shall each appoint a public member.

(d) No board member serving between January 1, 2000, and June 1, 2002, inclusive, shall be eligible for reappointment.

(e) For initial appointments made on or after January 1, 2003, one of the public members appointed by the Governor and two of the professional members shall serve terms of one year. One of the public members appointed by the Governor and two of the professional members shall serve terms of three years. The remaining public member appointed by the Governor and the remaining two professional members shall serve terms of four years. The public members appointed by the Senate Committee on Rules and the Speaker of the Assembly shall each serve for a term of four years.

SEC. 9. Section 3014 of the Business and Professions Code is amended to read:

3014. The board shall elect from its membership a president, a vice president, and a secretary who shall hold office for one year or until the election and qualification of a successor.

SEC. 10. Section 3015 of the Business and Professions Code is repealed.

SEC. 11. Section 3016 of the Business and Professions Code is amended to read:

3016. Each member of the board shall receive a per diem and expenses as provided in Section 103.

SEC. 12. Section 3017 of the Business and Professions Code is amended to read:

3017. The board shall hold regular meetings every calendar quarter. Special meetings shall be held upon request of a majority of the members of the board or upon the call of the president.

SEC. 13. Section 3018 of the Business and Professions Code is amended to read:

3018. The board shall keep an accurate record of all of its licensees, proceedings, and meetings.

SEC. 14. Section 3019 of the Business and Professions Code is amended to read:

3019. The board shall keep a record of all prosecutions for violations of this chapter and of all applications for licensure and examination.

SEC. 15. Section 3020 of the Business and Professions Code is repealed.

SEC. 16. Section 3021 of the Business and Professions Code is repealed.

SEC. 17. Section 3022 of the Business and Professions Code is repealed.

SEC. 18. Section 3023 of the Business and Professions Code is amended to read:

3023. For the purposes of this chapter, the board shall accredit schools, colleges, and universities in or out of this state providing

optometric education, that it finds giving a sufficient program of study for the preparation of optometrists.

SEC. 19. Section 3023.1 of the Business and Professions Code is repealed.

SEC. 20. Section 3025.1 is added to the Business and Professions Code, to read:

3025.1. The board may adopt rules and regulations that are, in its judgment, reasonable and necessary to ensure that optometrists have the knowledge to adequately protect the public health and safety by establishing educational requirements for admission to the examination for licensure.

SEC. 21. Section 3025.2 is added to the Business and Professions Code, to read:

3025.2. The board may adopt rules and regulations that are, in its judgment, reasonable and necessary to ensure that optometrists have the knowledge to adequately protect the public health and safety by governing its accreditation of schools, colleges, and universities that provide optometric education. In promulgating these rules and regulations, or in extending accreditation, the board may, to the extent that it deems consistent with the purposes of this chapter, recognize, accept, or adopt the advice, recommendation, accreditation, or approval of a nationally recognized accrediting agency or organization.

SEC. 22. Section 3025.7 is added to the Business and Professions Code, to read:

3025.7. Except as provided in Sections 3129 and 3130, nothing contained in Section 651.3 shall be construed as authorizing the board to adopt, amend, or repeal rules and regulations relating to price fixing or advertising of commodities.

SEC. 23. Section 3026.5 of the Business and Professions Code is repealed.

SEC. 24. Section 3027 of the Business and Professions Code is amended to read:

3027. The board shall employ an executive officer and other necessary assistance in the carrying out of the provisions of this chapter.

The executive officer shall perform the duties delegated by the board and shall be responsible to it for the accomplishment of those duties. The executive officer shall not be a member of the board. With the approval of the Director of Finance, the board shall fix the salary of the executive officer. The executive officer shall be entitled to traveling and other necessary expenses in the performance of his duties.

SEC. 25. Section 3027.5 of the Business and Professions Code is repealed.

SEC. 26. Section 3028 is added to the Business and Professions Code, to read:

3028. The Attorney General shall act as the legal counsel for the board and his or her services shall be a charge against it.

SEC. 27. Section 3029 of the Business and Professions Code is repealed.

SEC. 28. Section 3040 of the Business and Professions Code is amended to read:

3040. It is unlawful for a person to engage in the practice of optometry or to display a sign or in any other way to advertise or hold himself or herself out as an optometrist without having first obtained a certificate of registration from the board under the provisions of this chapter or under the provisions of any former act relating to the practice of optometry. The practice of optometry includes the performing or controlling of any acts set forth in Section 3041.

In any prosecution for a violation of this section, the use of test cards, test lenses, or of trial frames is prima facie evidence of the practice of optometry.

SEC. 29. Section 3041.1 is added to the Business and Professions Code, to read:

3041.1. With respect to the practices set forth in subdivisions (b), (d), and (e) of Section 3041, optometrists diagnosing or treating eye disease shall be held to the same standard of care to which physicians and surgeons and osteopathic physicians and surgeons are held.

SEC. 30. Section 3042 of the Business and Professions Code is amended to read:

3042. The provisions of this chapter do not prevent a licensed physician and surgeon from treating or fitting glasses to the human eye, or from doing any act within the practice of optometry, or a licensed physician and surgeon or optometrist from filling prescriptions or orders, nor do they prevent the replacing, duplicating or repairing of ophthalmic lenses, frames, or fittings by persons qualified to write or fill prescriptions or orders under the provisions of this chapter, nor prevent the doing of the mechanical work upon those lenses, frames, or fittings by an assistant, nor prevent an assistant acting under the responsibility and direction of a physician and surgeon or an optometrist from using any optical device in connection with ocular exercises, vision training, or orthoptics, or acts set forth in Section 2544.

It is unlawful for a person to dispense, replace, or duplicate an ophthalmic lens without a prescription or order from a licensed physician and surgeon or optometrist.

SEC. 31. Section 3044 of the Business and Professions Code is amended to read:

3044. A person over the age of 18 years desiring to engage in the practice of optometry in this state may file an application for

examination and an application for licensure. The application shall be accompanied by the fee required by this chapter.

SEC. 32. Section 3045 of the Business and Professions Code is amended to read:

3045. Applications shall be verified by the oath of the applicant and shall contain information and evidence satisfactory to the board showing the eligibility of the applicant.

SEC. 33. Section 3046 is added to the Business and Professions Code, to read:

3046. In order to obtain a license to practice optometry in California, an applicant shall have graduated from an accredited school of optometry, passed the required examination for licensure, and not have met any of the grounds for denial established in Section 480. The proceedings under this section shall be in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

SEC. 34. Section 3047 of the Business and Professions Code is repealed.

SEC. 35. Section 3050 of the Business and Professions Code is repealed.

SEC. 36. Section 3052 of the Business and Professions Code is repealed.

SEC. 37. Section 3054 of the Business and Professions Code is amended to read:

3054. The passing grades for the licensure examination shall be based on psychometrically sound principles of establishing minimum qualifications and levels of competency. If an applicant fails to pass any section of the examination, he or she may be examined in any succeeding examination held during the next five years only in those sections in which he or she failed to obtain a passing grade.

SEC. 38. Section 3055 of the Business and Professions Code is repealed.

SEC. 39. Section 3055 is added to the Business and Professions Code, to read:

3055. The board shall issue a license to an applicant who meets the requirements of this chapter, including the payment of the prescribed licensure, certification, or renewal fee, and who meets any other requirement in accordance with state law. A license or certificate issued under the chapter shall be subject to renewal as prescribed by the board and shall expire unless renewed in that manner. The board may provide for the late renewal of a license or certificate as provided for in Section 163.5.

SEC. 40. Section 3059 of the Business and Professions Code is amended to read:

3059. (a) It is the intent of the Legislature that the public health and safety would be served by requiring all holders of licenses to practice optometry granted under this chapter to continue their education after receiving their licenses. The board shall adopt regulations that require, as a condition to the renewal thereof, that all holders of licenses submit proof satisfactory to the board that they have informed themselves of the developments in the practice of optometry occurring since the original issuance of their licenses by pursuing one or more courses of study satisfactory to the board or by other means deemed equivalent by the board.

(b) The board may, in accordance with the intent of this section, make exceptions from continuing education requirements for reasons of health, military service, or other good cause.

(c) If for good cause compliance cannot be met for the current year, the board may grant exemption of compliance for that year, provided that a plan of future compliance that includes current requirements as well as makeup of previous requirements is approved by the board.

(d) The board may require that proof of compliance with this section be submitted on an annual or biennial basis as determined by the board.

(e) The board may adopt regulations to require licensees to maintain current certification in cardiopulmonary resuscitation. Training required for the granting or renewal of a cardiopulmonary certificate shall not be credited towards the requirements of subdivision (a) or (f).

(f) An optometrist certified to use therapeutic pharmaceutical agents pursuant to Section 3041.3 shall complete a total of 50 hours of continuing education every two years in order to renew his or her certificate. Thirty-five of the required 50 hours of continuing education shall be on the diagnosis, treatment, and management of ocular disease in any combination of the following areas:

(1) Glaucoma.

(2) Ocular infection.

(3) Ocular inflammation.

(4) Topical steroids.

(5) Systemic medication.

(6) Pain medication.

(g) The board shall encourage every optometrist to take a course or courses in pharmacology and pharmaceuticals as part of his or her continuing education.

(h) The board shall consider requiring courses in child abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected children.

(i) The board shall consider requiring courses in elder abuse detection to be taken by those licensees whose practices are such that there is a likelihood of contact with abused or neglected elder persons.

SEC. 41. Section 3070 of the Business and Professions Code is amended to read:

3070. Before engaging in the practice of optometry, each licensed optometrist shall notify the board in writing of the address or addresses where he or she is to engage, or intends to engage, in the practice of optometry and, also, of any changes in his or her place of practice. The practice of optometry is the performing or the controlling of any of the acts set forth in Section 3041.

SEC. 42. Section 3075 of the Business and Professions Code is repealed.

SEC. 43. Section 3075 is added to the Business and Professions Code, to read:

3075. An optometrist shall post in each location where he or she practices optometry, in an area that is likely to be seen by all patients who use the office, his or her current license or other evidence of current license status issued by the board. The board may charge a fee not to exceed twenty-five dollars ($25) for each issuance of evidence of current licensure.

SEC. 44. Section 3076 of the Business and Professions Code is amended to read:

3076. A licensed optometrist shall deliver to each patient fitted or supplied with lenses a receipt that contains his or her signature and all of the following information:

(a) His or her place of practice.

(b) The number of his or her license.

(c) A specification of the lenses furnished, in accordance with prescription release laws.

(d) The amount charged for them.

(e) Any referral for additional treatment.

SEC. 45. Section 3125 of the Business and Professions Code is amended to read:

3125. It is unlawful to practice optometry under a false or assumed name, or to use a false or assumed name in connection with the practice of optometry, or to make use of any false or assumed name in connection with the name of a person licensed pursuant to this chapter. However, the board may issue written permits authorizing an individual optometrist or an optometric group or optometric corporation to use a name specified in the permit in connection with its practice if, and only if, the board finds to its satisfaction that:

(a) The place or establishment, or the portion thereof, in which the applicant or applicants practice, is owned or leased by the applicant or applicants, and the practice conducted at that place or establishment, or portion thereof, is wholly owned and entirely controlled by the applicant or applicants; provided, however, that where the applicant or applicants

are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply.

(b) The name under which the applicant or applicants propose to operate is in the judgment of the board not deceptive or inimical to enabling a rational choice for the consumer public and contains at least one of the following designations: ''optometry'' or ''optometric''; provided, however, that where the applicant or applicants are practicing optometry in a community clinic, as defined in subdivision (a) of Section 1204 of the Health and Safety Code, this subdivision shall not apply. In no case shall the name under which the applicant or applicants propose to operate contain the name or names of any of the optometrists practicing in the community clinic.

(c) The names of all optometrists practicing at the location designated in the application are displayed in a conspicuous place for the public to see, not only at the location, but also in any advertising permitted by law.

(d) No charges which could result in revocation or suspension of an optometrist's certificate to practice optometry are pending against any optometrist practicing at the location.

Permits issued under this section by the board shall expire and become invalid unless renewed at the times and in the manner provided in Article 7 (commencing with Section 3145) for the renewal of certificates issued under this chapter. The board may charge an annual fee, not to exceed ten dollars ($10) for the issuance or renewal of each such permit.

Any permit issued under this section may be revoked or suspended at any time that the board finds that any one of the requirements for original issuance of a permit, other than under subdivision (d), is no longer being fulfilled by the individual optometrist, optometric corporation, or optometric group to whom the permit was issued. Proceedings for revocation or suspension shall be governed by the Administrative Procedure Act.

In the event the board revokes or suspends the certificate to practice optometry of an individual optometrist or any member of a corporation or group to whom a permit has been issued under this section, the revocation or suspension shall also constitute revocation or suspension, as the case may be, of the permit.

SEC. 46. 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 427

An act to add Section 13014 to the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 13014 is added to the Fish and Game Code, to read:

13014. (a) There are hereby established in the Special Deposit Fund, continued in existence by Section 16370 of the Government Code, both of the following accounts:

(1) The Fish and Game Mitigation and Protection Endowment Principal Account. The department shall deposit in this account the endowment funds received by the department pursuant to an agreement described in subdivision (b) and all interest generated thereon. The interest moneys shall be available to the department, upon appropriation by the Legislature, to fund long-term management, enhancement, monitoring, and enforcement activities on habitat lands in a manner consistent with the terms of the underlying agreement.

(2) The Fish and Game Mitigation and Protection Expendable Funds Account. The department shall deposit in this account moneys received pursuant to an agreement described in subdivision (b) that are not endowment funds and that are designated for expenditure for the purposes described in paragraph (2) of that subdivision. Notwithstanding Section 13340 of the Government Code, the moneys in the account established by this paragraph are hereby continuously appropriated to the department for expenditure without regard to fiscal year, for the purposes described in this section.

(b) (1) The department may deposit moneys into the accounts established pursuant to subdivision (a) that it receives pursuant to any of the following, if those moneys are received for the purposes described in paragraph (2):

(A) Agreements or permits pursuant to the Natural Communities Conservation Planning Act (Chapter 10 (commencing with Section 2800) of Division 3).

(B) Conservation bank agreements.

(C) Habitat conservation implementation agreements.
(D) Incidental take permits.
(E) Legal or other written settlements.
(F) Mitigation agreements.
(G) Streambed or lakebed alteration agreements.
(H) Trust agreements.

(2) The department may deposit the moneys received pursuant to an agreement described in paragraph (1) in an account established by this section only if it receives those moneys for at least one of the following purposes:

(A) Mitigating the adverse biological impacts of a specific project, activity, spill, or release.

(B) Protecting, conserving, restoring, enhancing, managing, and maintaining fish, wildlife, native plants, or their habitats.

CHAPTER 428

An act to amend Sections 1637 and 1639 of, and to add Article 16.3 (commencing with Section 1758.7) to Chapter 5 of Part 2 of Division 1 of the Insurance Code, relating to self-service storage agents.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 1637 of the Insurance Code is amended to read:

1637. An organization may hold any license or licenses necessary to act in the following capacities under this chapter and no others:

(a) A license to act as a life agent.
(b) A license to act as a fire and casualty broker-agent.
(c) A license to act as a cargo shipper's agent.
(d) A license to act as a personal lines licensee.
(e) A license to act as a credit insurance agent.
(f) A license to act as a rental car agent.
(g) A nonresident license to act as a limited lines licensee pursuant to subdivision (i) of Section 1639.
(h) A license to act as a self-service storage agent.

SEC. 2. Section 1639 of the Insurance Code is amended to read:

1639. The following types of licenses under this chapter may be issued to nonresidents:

(a) A fire and casualty broker-agent if the nonresident is duly licensed to transact more than one class of insurance, other than life insurance, disability insurance, title insurance, or life and disability insurance, under the laws of the state, territory of the United States, or province of Canada where he or she maintains a resident license to transact insurance.

(b) A personal lines broker-agent if the nonresident is duly licensed to transact those lines of insurance described in Section 1625.5, under the laws of the state, territory of the United States, or province of Canada where the resident license is maintained.

(c) A life agent if the nonresident possesses a resident license in another state, territory of the United States, or province of Canada to transact life insurance or disability insurance.

(d) A nonresident life agent may be granted authority to transact variable contracts if he or she has been granted that authority by the state where the resident license is maintained.

(e) A surplus line broker and a special lines surplus broker if the nonresident holds that type of license in the state or territory of the United States where the resident license is maintained.

(f) A credit insurance agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(g) A rental car agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(h) A cargo shipper's agent if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained.

(i) A limited lines license if the nonresident holds that type of license in the state, territory of the United States, or province of Canada where the resident license is maintained. As used in this section, ''limited lines license'' means any authority granted by the resident state that restricts the authority of the license to less than the total authority granted by any of the types of licenses identified in this section.

(j) A self-service storage agent if the nonresident holds that type of license in the state, territory of the United States, or Province of Canada where the resident license is maintained.

SEC. 3. Article 16.3 (commencing with Section 1758.7) is added to Chapter 5 of Part 2 of Division 1 of the Insurance Code, to read:

Article 16.3. Self-Service Storage Agents

1758.7. (a) No self-service storage facility, or franchisee of a self-service storage facility, shall offer or sell insurance unless it has

complied with the requirements of this article and has been issued a license by the commissioner as provided in this article.

(b) The commissioner may issue to a self-service storage facility, or its franchisee, that has complied with the requirements of this article, a license that authorizes the self-service storage facility or its franchisee to offer or sell the types of insurance specified in Section 1758.75 in connection with and incidental to rental agreements on behalf of any insurer authorized to write those types of insurance policies in this state.

(c) (1) The license period shall be a two-year period beginning as described in subparagraph (A) or (B) of paragraph (2), as applicable, and ending on the second succeeding year on the last calendar day of the month in which the initial license was issued.

(2) The commencement of a license period shall be determined for each self-service storage facility or franchisee of a self-service storage facility, as follows:

(A) Upon initial licensing, the license period begins on the date the license is issued.

(B) Upon license renewal, the license period begins on the first day of the month following the month in which the initial license was issued.

(3) (A) Not less than 60 days before a permanent license will expire, the commissioner may mail, to the latest address appearing on his or her records, an application to the licensee to renew the license for the appropriate succeeding license period. It is the licensee's responsibility to renew whether or not a renewal application is received. The commissioner may accept a late renewal without penalty, provided that the licensee's failure to comply is due to clerical error or inadvertence on the part of the department.

(B) The application for renewal of a license shall be filed on or before the expiration date.

(C) The application for renewal of an expired license may be filed after the expiration date and until the same month and day of the next succeeding year. A licensee who files the renewal application after the license has expired shall be charged, in addition to the renewal fee, a penalty of 50 percent of the renewal fee.

(d) The applicant for a license pursuant to this section shall submit an application fee upon initial application and upon renewal application in the amount or amounts determined by the department as sufficient to defray its actual cost of processing the applications and implementing this article.

(e) Costs associated with any enforcement action or investigation shall be paid for by the person or organization licensed pursuant to this article.

1758.71. (a) An applicant for a self-service storage agent license shall file the following documents with the commissioner:

(1) A written application for licensure signed by the applicant or an officer of the applicant in the form prescribed by the commissioner.

(2) A certificate by the insurer that is to be named in the self-service storage agent license stating that the insurer has satisfied itself that the named applicant is trustworthy and competent to act as its agent for the limited purpose of offering or selling the types of insurance specified in Section 1758.75 in connection with, and incidental to, self-service storage rental agreements and that the insurer will appoint the applicant to act as its agent in reference to offering or selling those types of insurance if the applicant is licensed by the commissioner. The certification shall be subscribed by an officer or managing agent of the insurer on a form prescribed by the commissioner.

(b) Notwithstanding any other provision of law, Sections 1667, 1668, 1668.5, 1669, 1670, 1738, and 1739 apply to any application for or issuance of a license pursuant to this article.

1758.72. (a) Each self-service storage agent shall provide an insurance training program for its employees that shall meet the following minimum standards:

(1) Each employee shall receive instruction about the types of insurance specified in Section 1758.75 that are offered for sale to prospective renters.

(2) Each employee shall receive training about ethical sales practices.

(3) Each employee shall receive training about the disclosures to be given to prospective renters pursuant to subdivision (b) of Section 1758.76.

(b) Training materials used by or on behalf of the self-service storage facility to train its endorsee shall be submitted to the department at the time the applicant applies for a license under this article and whenever modified thereafter. Any changes to previously submitted training materials shall be submitted to the department with the changes highlighted 30 days prior to their use by the licensee. Training materials and changes in those materials submitted to the department pursuant to this subdivision shall be deemed approved for use by the company unless the company is notified by the department to the contrary. Failure by a self-service storage facility to submit training materials or changes for department review, or use of unapproved or disapproved training materials shall constitute grounds for the denial of an application for license, nonrenewal of a license, or a suspension of a license, as appropriate.

(c) An employee may not be endorsed to a self-service storage agent license unless that employee is 18 years of age or older.

(d) The self-service storage facility, at the time it submits its self-service storage agent license application pursuant to Section 1758.71, shall establish a list of the names of all endorsees to its

self-service storage agent license. The list shall be maintained by the self-service storage facility in a form prescribed by, or format acceptable to, the commissioner, and shall be updated annually. The list shall be retained by the self-service storage facility for three years and made available to the commissioner for review and inspection.

1758.73. Any employee of a licensee who has been trained pursuant to Section 1758.72 may act on behalf and under the supervision of the self-service storage facility agent in matters relating to the conduct of business under that agent's license. The conduct of an employee or agent of a licensee acting within the scope of employment or agency shall be deemed the conduct of the self-service storage facility agent for the purposes of this article.

1758.74. (a) If a licensee violates any provision of this article, the commissioner may do any of the following:

(1) After notice and hearing, revoke or suspend the self-service storage facility's license.

(2) After notice and hearing, impose other penalties, including suspending the transaction of insurance at specific self-service storage facilities where violations of this article have occurred.

(3) Impose fines and penalties on the self-service storage agent for its conduct or that of its employees.

(b) If any person sells insurance in connection with, or incidental to, self-service storage rental agreements, or holds himself or herself or an organization out as a self-service storage agent without obtaining the license required by this article, the commissioner may issue a cease and desist order pursuant to Section 12921.8.

(c) Notwithstanding any other provision of law, the provisions of Section 1748.5 are applicable to a self-service storage facility or its franchisee issued a license pursuant to this article.

1758.75. A self-service storage facility or its franchisee licensed under this article may act as a self-service storage agent for an authorized insurer only with respect to the following types of insurance and only in connection with, and incidental to, self-service storage rental agreements:

(a) Insurance that provides hazard insurance coverage to renters for the loss of, or damage to, tangible personal property in storage or in transit during the rental period.

(b) Any other coverage the commissioner may approve as meaningful and appropriate in connection with the rental of storage space.

1758.76. A licensee shall not sell insurance pursuant to this article unless all of the following conditions are satisfied:

(a) The self-service storage agent provides brochures or other written material to the prospective renter that does all of the following:

(1) Summarizes the material terms and conditions of coverage offered to renters, including the identity of the insurer.

(2) Describes the process for filing a claim, including a toll-free telephone number to report a claim.

(3) Discloses any additional information on the price, benefits, exclusions, conditions, or other limitations of the types of insurance specified in Section 1758.75 that the commissioner may by rule prescribe.

(4) Provide the licensee's name, address, telephone number, and license number and the availability of the department's toll-free consumer hotline.

(b) The self-service storage agent makes all of the following disclosures to the renter, which shall be acknowledged in writing by the renter, or displayed by clear and conspicuous signs that are posted at every location where rental agreements are executed, such as the counter where a renter would sign a rental agreement:

(1) That the purchase by the renter of the insurance is not required in order to rent storage space. However, the licensee's employees may advise the renter that the self-service storage facility's rental agreement may contain provisions requiring the renter to provide insurance on his or her property in the storage unit.

(2) That the insurance policies offered by the self-service storage agent may provide a duplication of coverage already provided by a renter's homeowners insurance policy or by another source of coverage.

(3) That the self-service storage facility and its employees are not qualified or authorized to evaluate the adequacy of the purchaser's existing insurance coverage.

(c) If a renter elects to purchase the coverage, evidence of coverage is stated on the face of the rental agreement or is provided to the renter.

(d) The insurance is provided under an individual, a group, or a master policy issued to the self-service storage agent by an insurer authorized to write the types of insurance specified in Section 1758.75 in this state.

1758.77. A licensee shall not be required to treat moneys collected from renters purchasing insurance pursuant to this article as funds received in a fiduciary capacity if the insurer represented by the licensee has provided in writing that the funds need not be segregated from funds received by the self-service storage agent if the charges for insurance coverage are itemized and incorporated as part of the rental agreement.

1758.78. A self-service storage agent shall not do any of the following:

(a) Offer to sell insurance except in conjunction with, and incidental to, authorized rental agreements.

(b) Advertise, represent, or otherwise portray itself or its employees as licensed insurers, insurance agents, or insurance brokers.

1758.79. Any insurer that provides insurance to be sold by a self-service storage facility or its franchisee under this article shall file a copy of the policy with the commissioner, who shall make that policy available to the public.

1758.791. As used in this article:

(a) ''Self-service storage facility'' means a person or organization engaged in the business of providing leased or rented storage space to the public.

(b) ''Storage space'' means a room, unit, locker, or open space offered for rental to the public for temporary storage of personal belongings or light commercial goods.

(c) ''Renter'' means any person who obtains the use of storage space from a self-service storage company under the terms of a rental agreement.

(d) ''Rental agreement'' means any written agreement for the terms and conditions governing the use of a storage space provided by a self-service storage company.

(e) ''Self-service storage agent'' means a person or organization licensed pursuant to this article to offer insurance in connection with, and incidental to, rental agreements on behalf of an insurer authorized to write the types of insurance specified in Section 1758.75 in this state.

1758.792. The commissioner shall adopt rules to implement the provisions of this article which may include fee differentials for smaller, self-service storage facilities. The rules shall be adopted as emergency regulations in accordance with Chapter 3.5 (commencing with Section 11340) 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 rules shall be considered by the Office of Administrative Law to be necessary for the immediate preservation of the public peace, health and safety, and general welfare.

CHAPTER 429

An act to amend Section 290 of the Penal Code, relating to sex offender registration.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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 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 the sheriff of the county if he or she is residing 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 upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides.

(B) If the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.

(C) Every person described in paragraph (2), for the rest of his or her life while living as a transient in California shall be required to register, as follows:

(i) A transient must register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to paragraph (1) of subdivision (a), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she must register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to paragraph (1) of subdivision (a). Beginning on or before the 30th day following initial registration upon release, a transient must reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present 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 physically present upon the campus or in any of its facilities. A transient must reregister no less than once

every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(ii) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subparagraph (A) of paragraph (1) of subdivision (a). A person registered at a residence address in accordance with subparagraph (A) of paragraph (1) of subdivision (a), who becomes transient shall have five working days within which to reregister as a transient in accordance with clause (i).

(iii) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in clause (i). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient 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), and the information specified in clause (iv).

(iv) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.

(v) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to clause (i) of this subparagraph shall be punished in accordance with paragraph (6) of subdivision (g). Failure to comply with any other requirement of this section, shall be punished in accordance with either paragraph (1) or (2) of subdivision (g).

(vi) A transient who moves out of state shall inform, in person or in writing, the chief of police in the city in which he or she is physically present, or the sheriff of the county, if he or she is physically present in an unincorporated area or city that has no police department, within five working days of his or her move out of state. The transient shall inform that registering agency of his or her planned destination, residence or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall

forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(vii) For purposes of this section, ''transient'' means a person who has no residence. ''Residence'' means a place where a person is living or temporarily staying for more than five days, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

(viii) The transient registrant's duty to update his or her registration no less than every 30 days shall begin with his or her second transient update following the date this subdivision became effective.

(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, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 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 date 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 and who has a residence address changes his or her residence address, 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 transient location and any plans he or she has to return to California, if known. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a

copy of the change of address 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.

(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), (7), and (9), 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), any person who is required to register or reregister pursuant to clause (i) of subparagraph (C) of paragraph (1) of subdivision (a) and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of subparagraph (C) of paragraph (1) of subdivision (a) that he or she reregister no less than every 30 days shall be punished in accordance with either paragraph (1) or (2) of this subdivision.

(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.

(9) In addition to any other penalty imposed under this subdivision, the failure to provide information required on registration and reregistration forms of the Department of Justice, or the provision of false information, is a crime punishable by imprisonment in a county jail for a period not exceeding one year.

(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 5 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 crime or 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 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 the sheriff of the county if he or she is residing 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 upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides.

(B) If the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.

(C) Every person described in paragraph (2), for the rest of his or her life while living as a transient in California shall be required to register, as follows:

(i) A transient must register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to paragraph (1) of subdivision (a), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she must register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to paragraph (1) of subdivision (a). Beginning on or before the 30th day following initial registration upon release, a transient must reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is

physically present within that 30-day period, or the sheriff of the county if he or she is physically present 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 physically present upon the campus or in any of its facilities. A transient must reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(ii) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subparagraph (A) of paragraph (1) of subdivision (a). A person registered at a residence address in accordance with subparagraph (A) of paragraph (1) of subdivision (a), who becomes transient shall have five working days within which to reregister as a transient in accordance with clause (i).

(iii) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in clause (i). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient 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), and the information specified in clause (iv).

(iv) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.

(v) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to clause (i) of this subparagraph shall be punished in accordance with paragraph (6) of subdivision (g). Failure to comply with any other requirement of this section, shall be punished in accordance with either paragraph (1) or (2) of subdivision (g).

(vi) A transient who moves out of state shall inform, in person or in writing, the chief of police in the city in which he or she is physically present, or the sheriff of the county, if he or she is physically present in an unincorporated area or city that has no police department, within five working days of his or her move out of state. The transient shall inform

that registering agency of his or her planned destination, residence or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(vii) For purposes of this section, ''transient'' means a person who has no residence. ''Residence'' means a place where a person is living or temporarily staying for more than five days, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

(viii) The transient registrant's duty to update his or her registration no less than every 30 days shall begin with his or her second transient update following the date this subdivision became effective.

(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, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 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) (i) 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).

(ii) 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.

(iii) Except as provided in clause (iv), any person who would be required to register while residing in the state of conviction for a sex offense committed in that state.

(iv) Clause (iii) shall not apply to a person required to register in the state of conviction if the conviction was for the equivalent of one of the following offenses, and the person is not subject to clause (i):

(I) Indecent exposure, pursuant to Section 314.

(II) Unlawful sexual intercourse, pursuant to Section 261.5.

(III) Incest, pursuant to Section 285.

(IV) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in subparagraph (F) of paragraph (2) of subdivision (a), and the department is able, upon the exercise of reasonable diligence, to verify that fact.

(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 date 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 and who has a residence address changes his or her residence address, 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 transient location and any plans he or she has to return to California, if known. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address 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.

(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), (7), and (9), 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), any person who is required to register or reregister pursuant to clause (i) of subparagraph (C) of paragraph (1) of subdivision (a) and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of subparagraph (C) of paragraph (1) of subdivision (a) that he or she reregister no less than every 30 days shall be punished in accordance with either paragraph (1) or (2) of this subdivision.

(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.

(9) In addition to any other penalty imposed under this subdivision, the failure to provide information required on registration and reregistration forms of the Department of Justice, or the provision of false information, is a crime punishable by imprisonment in a county jail for a period not exceeding one year.

(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 5 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 crime or 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. 1.5. 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 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 the sheriff of the county if he or she is residing 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 upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides.

(B) If the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in

accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides, regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.

(C) Every person described in paragraph (2), for the rest of his or her life while living as a transient in California shall be required to register, as follows:

(i) A transient must register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to paragraph (1) of subdivision (a), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she must register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to paragraph (1) of subdivision (a). Beginning on or before the 30th day following initial registration upon release, a transient must reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present 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 physically present upon the campus or in any of its facilities. A transient must reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(ii) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subparagraph (A) of paragraph (1) of subdivision (a). A person registered at a residence address in accordance with subparagraph (A) of paragraph (1) of subdivision (a), who becomes transient shall have five working days within which to reregister as a transient in accordance with clause (i).

(iii) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in clause (i). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual

update, a transient 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), and the information specified in clause (iv).

(iv) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.

(v) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to clause (i) of this subparagraph shall be punished in accordance with paragraph (6) of subdivision (g). Failure to comply with any other requirement of this section, shall be punished in accordance with either paragraph (1) or (2) of subdivision (g).

(vi) A transient who moves out of state shall inform, in person or in writing, the chief of police in the city in which he or she is physically present, or the sheriff of the county, if he or she is physically present in an unincorporated area or city that has no police department, within five working days of his or her move out of state. The transient shall inform that registering agency of his or her planned destination, residence, or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(vii) For purposes of this section, ''transient'' means a person who has no residence. ''Residence'' means a place where a person is living or temporarily staying for more than five days, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

(viii) The transient registrant's duty to update his or her registration no less than every 30 days shall begin with his or her second transient update following the date this subdivision became effective.

(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, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 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, or release on probation, 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 date 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 and who has a residence address changes his or her residence address, 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 transient location and any plans he or she has to return to California, if known. If the person does not know the new residence address, the registrant shall inform the last registering agency or agencies that he or she is moving within five working days of the move, and shall later notify the agency or agencies of the new address within five working days of moving into the new residence address, whether temporary or permanent. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address 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.

(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), (7), and (9), 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), any person who is required to register or reregister pursuant to clause (i) of subparagraph (C) of paragraph (1) of subdivision (a) and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of subparagraph (C) of paragraph (1) of subdivision (a) that he or she reregister no less than every 30 days shall be punished in accordance with either paragraph (1) or (2) of this subdivision.

(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 as to each requirement he or she violated.

(9) In addition to any other penalty imposed under this subdivision, the failure to provide information required on registration and reregistration forms of the Department of Justice, or the provision of false information, is a crime punishable by imprisonment in a county jail for a period not exceeding one year.

(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 290.01, 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 5 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 crime or 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. 1.7. 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 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 the sheriff of the county if he or she is residing 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 upon the campus or in any of its facilities, within five working days of coming into, or changing his or her residence within, any city, county, or city and county, or campus in which he or she temporarily resides.

(B) If the person who is registering has more than one residence address at which he or she regularly resides, he or she shall register in accordance with subparagraph (A) in each of the jurisdictions in which he or she regularly resides, regardless of the number of days or nights spent there. If all of the addresses are within the same jurisdiction, the person shall provide the registering authority with all of the addresses where he or she regularly resides.

(C) Every person described in paragraph (2), for the rest of his or her life while living as a transient in California shall be required to register, as follows:

(i) A transient must register, or reregister if the person has previously registered, within five working days from release from incarceration, placement or commitment, or release on probation, pursuant to paragraph (1) of subdivision (a), except that if the person previously registered as a transient less than 30 days from the date of his or her release from incarceration, he or she does not need to reregister as a transient until his or her next required 30-day update of registration. If a transient is not physically present in any one jurisdiction for five consecutive working days, he or she must register in the jurisdiction in which he or she is physically present on the fifth working day following release, pursuant to paragraph (1) of subdivision (a). Beginning on or before the 30th day following initial registration upon release, a transient must reregister no less than once every 30 days thereafter. A transient shall register with the chief of police of the city in which he or she is physically present within that 30-day period, or the sheriff of the county if he or she is physically present 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 physically present upon the campus or in any of its facilities. A transient must reregister no less than once every 30 days regardless of the length of time he or she has been physically present in the particular jurisdiction in which he or she

reregisters. If a transient fails to reregister within any 30-day period, he or she may be prosecuted in any jurisdiction in which he or she is physically present.

(ii) A transient who moves to a residence shall have five working days within which to register at that address, in accordance with subparagraph (A) of paragraph (1) of subdivision (a). A person registered at a residence address in accordance with subparagraph (A) of paragraph (1) of subdivision (a), who becomes transient shall have five working days within which to reregister as a transient in accordance with clause (i).

(iii) Beginning on his or her first birthday following registration, a transient shall register annually, within five working days of his or her birthday, to update his or her registration with the entities described in clause (i). A transient shall register in whichever jurisdiction he or she is physically present on that date. At the 30-day updates and the annual update, a transient 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), and the information specified in clause (iv).

(iv) A transient shall, upon registration and reregistration, provide current information as required on the Department of Justice registration forms, and shall also list the places where he or she sleeps, eats, works, frequents, and engages in leisure activities. If a transient changes or adds to the places listed on the form during the 30-day period, he or she does not need to report the new place or places until the next required reregistration.

(v) Failure to comply with the requirement of reregistering every 30 days following initial registration pursuant to clause (i) of this subparagraph shall be punished in accordance with paragraph (6) of subdivision (g). Failure to comply with any other requirement of this section, shall be punished in accordance with either paragraph (1) or (2) of subdivision (g).

(vi) A transient who moves out of state shall inform, in person or in writing, the chief of police in the city in which he or she is physically present, or the sheriff of the county, if he or she is physically present in an unincorporated area or city that has no police department, within five working days of his or her move out of state. The transient shall inform that registering agency of his or her planned destination, residence or transient location out of state, and any plans he or she has to return to California, if known. The law enforcement agency shall, within three days after receipt of this information, forward a copy of the change of location information to the Department of Justice. The department shall forward appropriate registration data to the law enforcement agency having local jurisdiction of the new place of residence or location.

(vii) For purposes of this section, ''transient'' means a person who has no residence. ''Residence'' means a place where a person is living or temporarily staying for more than five days, such as a shelter or structure that can be located by a street address, including, but not limited to, houses, apartment buildings, motels, hotels, homeless shelters, and recreational and other vehicles.

(viii) The transient registrant's duty to update his or her registration no less than every 30 days shall begin with his or her second transient update following the date this subdivision became effective.

(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, or 266c, subdivision (b) of Section 266h, subdivision (b) of Section 266i, Section 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) (i) 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).

(ii) 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.

(iii) Except as provided in clause (iv), any person who would be required to register while residing in the state of conviction for a sex offense committed in that state.

(iv) Clause (iii) shall not apply to a person required to register in the state of conviction if the conviction was for the equivalent of one of the following offenses, and the person is not subject to clause (i):

(I) Indecent exposure, pursuant to Section 314.

(II) Unlawful sexual intercourse, pursuant to Section 261.5.

(III) Incest, pursuant to Section 285.

(IV) Sodomy, pursuant to Section 286, or oral copulation, pursuant to Section 288a, provided that the offender notifies the Department of Justice that the sodomy or oral copulation conviction was for conduct between consenting adults, as described in subparagraph (F) of paragraph (2) of subdivision (a), and the department is able, upon the exercise of reasonable diligence, to verify that fact.

(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, or release on probation, 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 date 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 and who has a residence address changes his or her residence address, 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 transient location and any plans he or she has to return to California, if known. If the person does not know the new residence address, the registrant shall inform the last registering agency or agencies that he or she is moving within five working days of the move, and shall later notify the agency or agencies of the new address within five working days of moving into the new residence address, whether temporary or permanent. The law enforcement agency or agencies shall, within three working days after receipt of this information, forward a copy of the change of address 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.

(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), (7), and (9), 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), any person who is required to register or reregister pursuant to clause (i) of subparagraph (C) of paragraph (1) of subdivision (a) and willfully fails to comply with the requirement that he or she reregister no less than every 30 days is guilty of a misdemeanor and shall be punished by imprisonment in a county jail at least 30 days, but not exceeding six months. A person who willfully fails to comply with the requirement that he or she reregister no less than every 30 days shall not be charged with this violation more often than once for a failure to register in any period of 90 days. Any person who willfully commits a third or subsequent violation of the requirements of subparagraph (C) of paragraph (1) of subdivision (a) that he or she reregister no less than every 30 days shall be punished in accordance with either paragraph (1) or (2) of this subdivision.

(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 as to each requirement he or she violated.

(9) In addition to any other penalty imposed under this subdivision, the failure to provide information required on registration and reregistration forms of the Department of Justice, or the provision of false information, is a crime punishable by imprisonment in a county jail for a period not exceeding one year.

(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 290.01, 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 5 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 crime or 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. It is the intent of the Legislature that this measure address the holding of the California Court of Appeal in People v. North (2003) 112 Cal.App.4th 612.

SEC. 3. (a) Section 1.3 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and AB 2395. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 290 of the Penal Code, (3) SB 1289 is not enacted or as enacted does not amend that section, and (4) this bill is enacted after AB 2395, in which case Sections 1, 1.5, and 1.7 of this bill shall not become operative.

(b) Section 1.5 of this bill incorporates amendments to Section 290 of the Penal Code proposed by both this bill and SB 1289. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 290 of the Penal Code, (3) AB 2395 is not enacted or as enacted does not amend that

section, and (4) this bill is enacted after SB 1289, in which case Sections 1, 1.3, and 1.7 of this bill shall not become operative.

(c) Section 1.7 of this bill incorporates amendments to Section 290 of the Penal Code proposed by this bill, AB 2395, and SB 1289. It shall only become operative if (1) all three bills are enacted and become effective on or before January 1, 2005, (2) all three bills amend Section 290 of the Penal Code, and (3) this bill is enacted after AB 2395 and SB 1289, in which case Sections 1, 1.3, and 1.5 of this bill shall not become operative.

SEC. 4. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution 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, or provides for offsetting savings to local agencies that result in no net costs to the local agencies within the meaning of Section 17556 of the Government Code.

CHAPTER 430

An act to amend Sections 9270, 11402, and 11406 of, and to amend, repeal, and add Section 4466 of, the Vehicle Code, relating to vehicles.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 4466 of the Vehicle Code is amended to read:

4466. (a) The department shall 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 either 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 one of the following:

(A) A legal owner, if the legal owner is not the same person as the registered owner or as the lessee under Section 4453.5.

(B) A dealer or an agent of the dealer.

(C) A dismantler.

(D) An insurer or an agent of the insurer.

(E) A salvage pool.

(c) At the discretion of the department, the requirements of subdivision (a) shall not apply in any of the following circumstances:

(1) An application for a duplicate or substitute certificate of title or license plate is submitted by a licensed registration service representing any of the following:

(A) A person, including, but not limited to, a person listed in subparagraphs (A) to (E), inclusive, of paragraph (2) of subdivision (b).

(B) A business entity recognized under the laws of this state or the laws of any foreign or domestic jurisdiction whose laws are in parity with the laws of this state.

(C) A court-appointed bankruptcy referee.

(D) A person who is an individual, is not included in subparagraphs (A) to (C), inclusive, and submits to the licensed registration service an application with a signature that is validated by a notary public. The licensed registration service shall maintain full and complete records of its transactions conducted pursuant to this subparagraph and shall make those records available for inspection by an investigator of the Department of Motor Vehicles, investigator of the Department of the California Highway, a city police department, a county sheriff's office, or a district attorney's office, if the investigator requests access to the record and the request is for the purpose of a criminal investigation.

(2) 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.

(3) 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.

(d) 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.

(e) This section 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. 1.5. Section 4466 is added to the Vehicle Code, to read:

4466. (a) The department shall 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.

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

SEC. 2. Section 9270 of the Vehicle Code is amended to read:

9270. (a) The department may charge a service fee of not more than fifteen dollars ($15), in addition to other fees payable under this code, for the expedited completion of any of the following services within 72 hours after receipt of a complete and proper application for the service:

(1) Initial registration of a vehicle.

(2) Transfer of registration of a vehicle.

(3) Issuance of a duplicate certificate of ownership.

(b) The services in subdivision (a) shall be available only at the department's headquarters office in Sacramento.

SEC. 3. Section 11402 of the Vehicle Code is amended to read:

11402. (a) The amount of the bond required by subdivision (e) of Section 11401 for the issuance of a registration service license, or for the renewal of such a license is twenty-five thousand dollars ($25,000). Liability under the bond shall remain at that amount.

(b) If the amount of the liability under the bond is decreased, or there is outstanding a final court judgment arising out of a violation of any provision of this code for which the registration service is liable, the license of the registration service shall be automatically suspended. In order to reinstate the license, the registration service shall either file an additional bond or restore the bond on file to the original amount, or shall satisfy the outstanding judgment for which the registration service and surety are liable.

(c) The bond shall remain in effect for three years after cessation of business of the registration service.

SEC. 4. Section 11406 of the Vehicle Code is amended to read:

11406. (a) Every registration service shall keep accurate business records containing all of the following information:

(1) The name, address, and license number of the registration service and the name and address of every employee who performs registration work.

(2) The name and address of each client for whom registration work was performed.

(3) The identity of every vehicle by year, make, type, license number, and vehicle identification number on which registration work was performed.

(4) The amount of registration fees or payments collected for each vehicle on which registration work was performed, including the method of payment to the registration service.

(5) The amount of registration fees or payments submitted to the department for each vehicle on which registration work was performed, including the date and method of payment to the department.

(6) The amount of any refunds or additional charges on registration fees or payments collected for each vehicle on which registration work was performed, including the date and method of payment of the refund or additional charge by or to the client, the registration service, or the department.

(7) The name, signature, or initials of each employee performing work on each transaction and the date the work was done.

(8) The cost to each client for the registration work performed on each of the client's vehicles.

(b) As an alternative to maintaining the records required by paragraphs (1) to (8), inclusive, of subdivision (a), a registration service may retain a copy of the listing sheet approved by the department for transmitting registration documents to the department.

(c) Every registration service shall provide each customer with a document containing all of the information required by subdivision (a) relative to that customer's transaction, excluding paragraph (7) and excluding the addresses of employees and other customers' names and addresses. This requirement does not apply to transactions for customers of a dealer or dismantler.

(d) Every registration service shall display prominently at its place of business a sign indicating that the service is not a branch of the department and shall inform each customer of that fact.

CHAPTER 431

An act to amend Sections 1053, 1055, 1055.1, 1055.5, 1056, 1060, 2003, 7151, 7360, 7852.4, 7920, 8235, 8392, 8405.1, 8405.4, 8597, 9000, 9001.7, 9001.8, 9006, 13005, 15103, and 15104 of, to add Sections 1055.4, 9000.5, 9027, 9027.5, and 9029.5 to, to repeal Section 9001.5 of, and to repeal and add Section 9001.6 of, the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 1053 of the Fish and Game Code is amended to read:

1053. No person shall obtain more than one license, permit, reservation, or other entitlement of the same class, or more than the number of tags authorized by statute or regulation for the same license year, except under one of the following conditions:

(a) Licenses issued pursuant to paragraphs (3), (4) and (5) of subdivision (a) of Section 7149, paragraphs (3), (4), and (5) of subdivision (a) of Section 7149.05, and paragraphs (4) and (5) of subdivision (a) of Section 3031.

(b) The loss or destruction of an unexpired license, tag, permit, reservation, or other entitlement as certified by the applicant's signed affidavit and proof, as determined by the department, that the original license, tag, permit, reservation, or other entitlement was issued, and payment of a base fee of five dollars ($5), adjusted pursuant to Section 713, not to exceed the fee for the original entitlement.

(c) The adjustment of the base fee pursuant to Section 713 applies to the hunting license years commencing on or after July 1, 1996, and the fishing license years commencing on or after January 1, 1996.

SEC. 2. Section 1055 of the Fish and Game Code is amended to read:

1055. (a) Any person, except a commissioner, officer, or employee of the department, may submit an application to the department, to be a license agent to issue licenses, permits, reservations, tags, and other entitlements.

(b) A person shall only be authorized to be a license agent to issue licenses, permits, reservations, tags, and other entitlements, upon the written approval of the department.

(c) The department may consign licenses, permits, reservations, tags, and other entitlements to authorized license agents.

(d) The department may provide licenses, permits, reservations, tags, or other entitlements to authorized license agents and shall collect prior to delivery an amount equal to the fees for all licenses, permits, reservations, tags, and other entitlements that are provided. Any license agent who pays the fees prior to delivery for licenses, permits, reservations, tags, or other entitlements is exempt from subdivisions (a) and (d) of Section 1055.5 and Sections 1056, 1057, and 1059. Any licenses, permits, reservations, tags, or other entitlements provided pursuant to this subdivision that remain unissued at the end of the license

year may be returned to the department for refund or credit, or a combination thereof within six months of the item expiration date. No credit may be allowed after six months following the last day of the license year.

(e) Licenses, permits, reservations, tags, and other entitlements may only be provided to authorized license agents that are in compliance with all laws, regulations, and policies governing the sale and reporting of licenses, permits, reservations, tags, and other entitlements.

(f) Authorized license agents shall add a handling charge to the fees prescribed in this code or in regulations adopted pursuant to this code for licenses, permits, reservations, tags, and other entitlements issued by the license agent in an amount that is 5 percent of the face value of the item rounded to the nearest five cents ($0.05).

(g) The handling charge added pursuant to subdivision (f) shall be incorporated into the total amount collected for issuing any license, permit, reservation, tag, and other entitlement, but the handling charge may not be included when determining license fees in accordance with Section 713. License agents may issue any license, permit, reservation, tag, and other entitlement for any amount up to 10 percent less than the fee prescribed in this code or in regulations adopted pursuant to this code. The license agent shall remit to the department the full amount of the fees as prescribed in this code or in regulations adopted pursuant to this code for all licenses, permits, reservations, tags, and other entitlements issued.

(h) The handling charge in subdivision (f) is the license agent's only compensation for services. The license agent shall not be entitled to any other additional fee or charge for issuing licenses, permits, reservations, tags, and other entitlements authorized pursuant to this section.

(i) The department may designate a nonprofit organization, organized pursuant to the laws of this state, or the California chapter of a nonprofit organization, organized pursuant to the laws of another state, as a license agent for the sale of lifetime licenses issued pursuant to Sections 714, 3031.2, and 7149.2. These licenses may be sold by auction or by other methods and are not subject to the fee limitations prescribed in this code. An agent authorized to issue lifetime sport fishing licenses, lifetime hunting licenses, and lifetime sportsman's licenses under this subdivision is exempt from subdivisions (f) and (h). The license agent shall remit to the department the fees from the sale of lifetime licenses, as defined in Sections 714, 3031.2, and 7149.2.

(j) At any single business location, a license agent shall issue all items from a single book before commencing to issue licenses, permits, reservations, tags, or other entitlements of the same series from another book.

(k) License agents that receive licenses, permits, reservations, tags, and other entitlements pursuant to subdivision (c) shall return all unissued and expired licenses, permits, reservations, tags, and other entitlements to the department within 20 days following the last day of the license year. Any unissued and expired license, permit, reservation, tag, or other entitlement that is not returned within 60 days following the last day of the license year shall be billed to the license agent. Licenses, permits, reservations, tags, and other entitlements may be returned for credit after the 60 days; however, the license agent shall pay interest and penalties on any sold licenses, permits, reservations, tags, and other entitlements as prescribed in subdivision (b) of Section 1059. No credit may be allowed after six months following the last day of the license year.

(*l*) This section does not apply to licenses, permits, reservations, tags, or other entitlements issued through the Automated License Data System.

SEC. 3. Section 1055.1 of the Fish and Game Code is amended to read:

1055.1. (a) Any person, except a commissioner, officer, or employee of the department, may submit an application to the department to be a license agent to issue licenses, permits, reservations, tags, or other entitlements.

(b) A person shall only be authorized to be a license agent to issue licenses, permits, reservations, tags, and other entitlements, upon the written approval of the department.

(c) The department may provide licenses, permits, reservations, tags, or other entitlements to authorized license agents and shall collect, prior to delivery, an amount equal to the fees for all licenses, permits, reservations, tags and other entitlements provided. Any license agent who pays the fees prior to delivery for licenses, permits, reservations, tags, or other entitlements is exempt from subdivisions (a) and (e) of Section 1055.5 and Sections 1056, 1057, and 1059. Any licenses, permits, reservations, tags, or other entitlements provided pursuant to this subdivision that remain unissued at the end of the license year may be returned to the department for refund or credit, or a combination thereof, within six months of the item expiration date. No credit may be allowed after six months following the last day of the license year.

(d) Authorized license agents shall add a handling charge to the fees prescribed in this code or in regulations adopted pursuant to this code for any license, permit, reservation, tag, and other entitlement issued by the license agent in an amount that is 5 percent of the face value of the item rounded to the nearest five cents ($0.05).

(e) The handling charge added pursuant to subdivision (d) shall be incorporated into the total amount collected for issuing the license,

permit, reservation, tag, and other entitlement, but the handling charge shall not be included when determining license fees in accordance with Section 713. A license agent may issue any license, permit, reservation, tag, or other entitlement for any amount up to 10 percent less than the fee prescribed in this code or in regulations adopted pursuant to this code. The license agent shall remit to the department the full amount of the fees as prescribed in this code or in regulations adopted pursuant to this code for all licenses, permits, reservations, tags, and other entitlements issued.

(f) The handling charge required by subdivision (d) is the license agent's only compensation for services. The license agent shall not be entitled to any other additional fee or charge for issuing any license, permit, reservation, tag, or other entitlement authorized pursuant to this section.

(g) The department may designate a nonprofit organization, organized pursuant to the laws of this state, or the California chapter of a nonprofit organization, organized pursuant to the laws of another state, as a license agent for the sale of lifetime licenses issued pursuant to Sections 714, 3031.2, and 7149.2. These licenses may be sold by auction or by other methods and are not subject to the fee limitations prescribed in this code. An agent authorized to issue lifetime sport fishing licenses, lifetime hunting licenses, and lifetime sportsman's licenses under this subdivision is exempt from subdivisions (d) and (f). The license agent shall remit to the department the fees from the sale of lifetime licenses as defined in Sections 714, 3031.2, and 7149.2.

(h) This section applies only to licenses, permits, reservations, tags, and other entitlements issued through the Automated License Data System.

SEC. 4. Section 1055.4 is added to the Fish and Game Code, to read:

1055.4. Any person authorized pursuant to Section 1055 who submits a check or money order for payment of licenses, permits, reservations, tags, and other entitlements that is returned unpaid by the bank or financial institution it was drawn upon shall be required to pay a fee of thirty dollars ($30), plus any penalty and interest charges, as defined in Section 1059.

SEC. 5. Section 1055.5 of the Fish and Game Code is amended to read:

1055.5. (a) Except as provided in subdivision (b) or (c), each authorized license agent who receives licenses, permits, reservations, tags, and other entitlements, pursuant to subdivision (c) of Section 1055, shall remit to the department the fees prescribed in this code or in regulations adopted pursuant to this code for all licenses, permits, reservations, tags, and other entitlements issued in each calendar month not later than 20 days following the last day of that calendar month. The

transmittal of the fees to the department shall be accompanied with an accounting report on forms provided by the department of all licenses, permits, reservations, tags, and other entitlements issued during the preceding month.

(b) A license agent is not required to remit the fees for a book of licenses, permits, reservations, tags, or other entitlements in any month if, on the last day of the preceding month, all items in that single book provided for issuance at a single business location are not issued or expired. If, however, all items in that book are issued or expired, the license agent shall remit the fees for that book and transmit the accounting report in accordance with the requirements of this section.

(c) The license agent may retain not more than fifteen cents ($0.15) of the fee received for each Colorado River special use stamp issued pursuant to Section 7180 as compensation for services. The license agent shall remit to the department the fees prescribed by Section 7180, less any amounts retained under this subdivision, for all Colorado River special use stamps issued. The license agent shall remit the net fees with an accounting report as prescribed in subdivision (a).

(d) Except as provided in subdivision (c), any fee remittance and accounting report not transmitted to the department within 30 days following the last day of each calendar month is delinquent, and fees due are subject to interest and penalties prescribed in subdivision (b) of Section 1059. Interest and penalties shall be computed beginning 21 days following the last day of the calendar month in which the fees were collected.

(e) This section does not apply to licenses, permits, reservations, tags, or other entitlements issued through the Automated License Data System.

SEC. 6. Section 1056 of the Fish and Game Code is amended to read:

1056. (a) Authorized license agents who receive licenses, permits, reservations, tags, and other entitlements pursuant to subdivision (c) of Section 1055 may be required to execute, in favor of the department, a bond, payable to the department, in a sum determined by the department. The bond shall secure the accurate accounting and payment to the department of the funds collected and the performance of the duties imposed upon the license agent by this article.

(b) Any license agent who fails to transmit the fees or accounting reports required by Section 1055.5 or 1055.6 not later than 60 days following the due date as specified by the department may be required to provide a bond pursuant to subdivision (a) in order to continue as a license agent.

SEC. 7. Section 1060 of the Fish and Game Code is amended to read:

1060. (a) The department may accept from any authorized license agent an affidavit for settlement on its account in lieu of licenses, permits, reservations, tags, and other entitlements that have been lost or destroyed if the license agent meets the following criteria:

(1) Reports any losses of licenses, permits, reservations, tags, or other entitlements to the department on or before the end of the next business day of the department.

(2) Submits the following items to the department not more than 20 days following the last day of the calendar month in which the items were lost or destroyed:

(A) An accounting report listing all licenses, permits, reservations, tags, and other entitlements that were lost or destroyed.

(B) A signed and notarized affidavit that shows the value and type of the licenses, permits, reservations, tags, and other entitlements, their serial numbers, and the causes of loss or destruction.

(b) This section does not apply to licenses, permits, reservations, tags, or other entitlements that are issued through the Automated License Data System.

SEC. 8. Section 2003 of the Fish and Game Code is amended to read:

2003. (a) Except as specified in subdivisions (b), (c), and (d), 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.

(d) This section does not apply to any person conducting an individual contest, tournament, or derby for the taking of game birds and mammals, if the total value of all prizes or other inducements is less than

five hundred dollars ($500) for the individual contest, tournament, or derby.

SEC. 9. Section 7151 of the Fish and Game Code is amended to read:

7151. (a) Upon application to the department, the following persons, if they have not been convicted of any violation of this code, shall be issued, free of any charge or fee, a sport fishing license, which authorizes the licensee to take any fish, reptile, or amphibian anywhere in this state for purposes other than profit:

(1) Any blind person upon presentation of proof of blindness. ''Blind person'' means a person with central visual acuity of 20/200 or less in the better eye, with the aid of the best possible correcting glasses, or central visual acuity better than 20/200 if the widest diameter of the remaining visual field is no greater than 20 degrees. Proof of blindness shall be by certification from a qualified licensed optometrist or ophthalmologist or by presentation of a license issued pursuant to this paragraph in the any previous license year.

(2) Every resident Native American who, in the discretion of the department, is financially unable to pay the fee required for the license.

(3) Any developmentally disabled person, upon presentation of certification of that disability from a qualified licensed physician, or the director of a state regional center for the developmentally disabled.

(4) Any person who is a resident of the state and who is so severely physically disabled as to be permanently unable to move from place to place without the aid of a wheelchair, walker, forearm crutches, or a comparable mobility-related device. Proof of the disability shall be by certification from a licensed physician or surgeon or, by presentation of a license issued pursuant to this paragraph in any previous license year after 1996.

(b) Sport fishing licenses issued pursuant to paragraph (2) of subdivision (a) are valid for the calendar year of issue or, if issued after the beginning of the year, for the remainder thereof.

(c) Sport fishing licenses issued pursuant to paragraphs (1), (3), and (4) of subdivision (a) of this section are valid for five calendar years, or if issued after the beginning of the first year, for the remainder thereof.

(d) Upon application to the department, the department may issue, free of any charge or fee, a sport fishing permit to groups of mentally or physically handicapped persons under the care of a certified federal, state, county, city, or private licensed care center that is a community care facility as defined in subdivision (a) of Section 1502 of the Health and Safety Code, to organizations exempt from taxation under Section 501(c)(3) of the federal Internal Revenue Code, or to schools or school districts. Any organization that applies for a group fishing permit shall provide evidence that it is a legitimate private licensed care center,

tax-exempt organization, school, or school district. The permit shall be issued to the person in charge of the group and shall be in his or her possession when the group is fishing. Employees of private licensed care centers, tax-exempt organizations, schools, or school districts are exempt from Section 7145 only while assisting physically or mentally disabled persons fishing under the authority of a valid permit issued pursuant to this section. The permit shall include the location where the activity will take place, the date or dates of the activity, and the maximum number of people in the group. The permitholder shall notify the local department office before fishing and indicate where, when, and how long the group will fish.

(e) On January 15 of each year, the department shall determine the number of free sport fishing licenses in effect, during the preceding year under subdivisions (a) and (d).

(f) There shall be appropriated from the General Fund a sum equal to two dollars ($2) per free sport fishing license in effect during the preceding license year under subdivisions (a) and (d), as determined by the department pursuant to subdivision (e). That sum may be appropriated annually in the Budget Act for transfer to the Fish and Game Preservation Fund and appropriated in the Budget Act from the Fish and Game Preservation Fund to the department for the purposes of this part.

SEC. 10. Section 7360 of the Fish and Game Code is amended to read:

7360. (a) A person shall not sport fish in the tidal waters of the San Francisco Bay Delta and the main stem of the Sacramento and San Joaquin Rivers, including major tributaries, below the most downstream dam, unless he or she first obtains, in addition to a valid California sport fishing license and any applicable stamp or validation issued pursuant to Section 7149 or 7149.05, a Bay-Delta Sport Fishing Enhancement Stamp or validation and affixes that stamp or validation to his or her valid California sport fishing license. Any person issued a sport fishing license pursuant to paragraph (4) or (5) of subdivision (a) of Section 7149 or paragraph (4) or (5) of subdivision (a) of Section 7149.05 is not subject to this division.

(b) The commission may modify, by regulation, the geographic parameters specified in subdivision (a).

(c) The department or an authorized license agent shall issue a Bay-Delta Sport Fishing Enhancement Stamp or validation upon payment of a base fee of five dollars ($5), in the 2004 license year, which shall be adjusted annually thereafter pursuant to Section 713.

SEC. 11. Section 7852.4 of the Fish and Game Code is amended to read:

7852.4. The owner of a vessel upon which a person who is at least 16, but less than 18, years of age, and who is licensed under Section 7852 is working shall obtain, and maintain in full force and effect at all times that a person is working on or about the vessel, a policy of insurance that provides indemnification to the person licensed under Section 7852 in case of accident or injury while working on or about the vessel.

SEC. 12. Section 7920 of the Fish and Game Code is amended to read:

7920. The owner of any boat or vessel who, for profit, permits any person to take fish, shall procure a commercial passenger fishing boat license.

This article applies only to a boat or vessel whose owner or his or her employee or other representative is with it when it is used for fishing.

A person operating a guide boat, as defined in Section 46, is not required to obtain a commercial passenger fishing boat license.

SEC. 13. Section 8235 of the Fish and Game Code is amended to read:

8235. (a) The owner of a permitted vessel, or that owner's agent, may apply for renewal of the permit annually on or before March 31, upon payment of the fees established under subdivision (b), without penalty. Upon receipt of the application and fees, the department shall issue the permit for use of the permitted vessel in the subsequent permit year only to the owner of the permitted vessel.

(b) The department shall fix the annual fee for the renewal of the permit in an amount it determines to be necessary to pay the reasonable costs of implementing and administering this article.

(c) If an owner to whom a permit has been issued, or that owner's agent, applies for renewal of the permit, and the application for the renewal is received in an office of the department, or is postmarked if mailed, after March 31 but on or before April 30, the department shall accept the application and, upon payment of an additional late fee of one hundred dollars ($100), the department shall issue the permit for use of the permitted vessel in the subsequent permit year.

(d) The department shall suspend any late fees otherwise due under subdivision (c) and shall issue a permit for use of the permitted vessel in the subsequent permit year if the department is unable to accept applications for renewal of permits by March 1.

(e) Except as provided in subdivision (c), the department shall not renew a permit for which the application for renewal is not received, or, if mailed, is received or postmarked after expiration of the permit.

SEC. 14. Section 8392 of the Fish and Game Code is amended to read:

8392. No California halibut may be taken, possessed, or sold that measures less than 22 inches in total length. Total length means the

shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail.

SEC. 15. Section 8405.1 of the Fish and Game Code is amended to read:

8405.1.

(a) Applicants for a sea cucumber permit shall specify by gear type, either trawl or dive, the method in which the applicant intends to take sea cucumbers. The gear type of a sea cucumber permit, either trawl or dive, shall not be transferable.

(b) The fee for a sea cucumber permit shall be two hundred fifty dollars ($250).

(c) Each permittee shall complete and submit an accurate record of all sea cucumber fishing activities on forms provided by the department.

(d) In order to renew a sea cucumber permit for any permit year, an applicant shall have been issued a sea cucumber permit in the immediately preceding permit year. Applications for renewal of a sea cucumber permit shall be received by the department or, if mailed, postmarked, by April 30 of the permit year.

SEC. 16. Section 8405.4 of the Fish and Game Code is amended to read:

8405.4. This article shall become inoperative on April 1, 2010, and as of January 1, 2011, is repealed, unless a later enacted statute that is enacted before January 1, 2011, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 17. Section 8597 of the Fish and Game Code is amended to read:

8597. (a) It is unlawful for any person to take, possess aboard a boat, or land for marine aquaria pet trade purposes any live organisms identified in subdivision (b), unless that person has a valid marine aquaria collector's permit that has not been suspended or revoked. At least one person aboard the boat shall have a valid marine aquaria collector permit.

(b) Except as provided in Section 8598.2, and unless otherwise prohibited in this code, or regulations made pursuant thereto, specimens of the following groups or species may be taken, possessed aboard a boat, or landed under a marine aquaria collector's permit:

(1) Marine plants:

(A) Chlorophyta.

(B) Phaeophyta.

(C) Rhodophyta.

(D) Spermatophyta, all species.

(2) Invertebrates:

(A) Polychaeta—worms; all species.
(B) Crustacea—shrimp, crabs; all species, except the following:
(i) Dungeness crab—Cancer magister.
(ii) Yellow crab—Cancer anthonyi.
(iii) Red crab—Cancer productus.
(iv) Sheep crab—Loxorhynchus grandis.
(v) Spot prawn—Pandalus platyceros.
(vi) Ridgeback prawn—Sicyonia ingentis.
(vii) Golden prawn—Penaeus californiensis.
(viii) Sand crab—Emerita analoga.
(ix) Redrock shrimp—Lysmata californica.
(x) Bay shrimp—Crangon sp. and Palaemon macrodactylus.
(xi) Ghost shrimp—Callianassa sp.
(C) Asteroidea—Sea stars; all species.
(D) Ophiuroidea—Brittle stars; all species.
(E) Gastropoda—snails, limpets, sea slugs; all species, except Kellet's whelk—Kelletia kelleti.
(F) Bivalvia—clams and mussels; all species.
(G) Polyplacophora—Chitons; all species.
(H) Cephalopoda—Octopuses and squids; all species, except two spot octopuses—Octopus bimaculatus and Octopus maculoides—and market squid—Loligo opalescens.
(I) Tunicata—Sea squirts; all species.
(3) Vertebrates:
(A) Osteichthyes—Finfishes; all species, except the following:
(i) Rockfish—Sebastes sp. larger than six inches total length.
(ii) Sheephead—Semicossyphus pulcher larger than six inches total length.
(iii) Anchovy—Engraulis mordax.
(iv) Sardine—Sardinops sagax.
(v) Pacific/chub mackerel—Scomber japonicus.
(vi) Jack mackerel—Trachurus symmetricus.
(vii) Queenfish—Seriphus politus.
(viii) White Croaker—Genyonemus lineatus.
(ix) Top smelt—Atherinops affinis.
(x) Grunion—Leuresthes tenuis.
(xi) Shiner surf perch—Cymatogaster aggregata.
(xii) Longjawed mudsucker—Gillichthys mirabilis.
(B) Chondrichthyes—sharks, rays, and skates; all species less than 18 inches total length.

(c) The holder of a permit issued pursuant to this section is not required to obtain or possess a kelp harvester's license issued pursuant to Section 6651, a tidal invertebrate permit issued pursuant to Section 8500, or a general trap permit issued pursuant to Article 1 (commencing

with Section 9000) of Chapter 4, when taking, possessing, or landing live organisms for marine aquaria pet trade purposes pursuant to subdivision (b), subject to regulations governing the taking of tidal invertebrates. The commission shall adopt regulations to implement this subdivision, and, for that purpose, may incorporate other regulations by reference.

SEC. 18. Section 9000 of the Fish and Game Code is amended to read:

9000. (a) Except as expressly authorized in this article, no person shall use a trap to take any finfish, mollusk, or crustacean in the waters of this state for commercial purposes.

(b) Traps may be used to take finfish in ocean waters only as authorized by this article.

(c) Freshwater baitfish traps that are used as provided in Section 8463 are not subject to this article.

SEC. 19. Section 9000.5 is added to the Fish and Game Code, to read:

9000.5. For the purposes of this article, the following terms have the following meanings:

(a) ''Bucket trap'' means a plastic bucket of five gallons or less in capacity.

(b) ''Deeper nearshore species'' means those finfish identified as deeper nearshore species in regulations adopted by the commission pursuant to Section 8587.1.

(c) ''General trap permit'' means a valid permit to take fish for commercial purposes issued pursuant to Section 9001 that has not been suspended or revoked.

(d) ''Korean trap'' means a molded plastic cylinder that does not exceed 6 inches in diameter and does not exceed 24 inches in length.

(e) ''Nearshore species'' means those finfish identified as such in regulations adopted by the commission pursuant to Section 8587.1.

(f) ''Popup'' means a mechanism capable of releasing a submerged buoy at a predetermined time.

SEC. 20. Section 9001.5 of the Fish and Game Code is repealed.

SEC. 21. Section 9001.6 of the Fish and Game Code is repealed.

SEC. 22. Section 9001.6 is added to the Fish and Game Code, to read:

9001.6. Hagfish may be taken under a general trap permit, if all of the following criteria are met:

(a) Korean traps and bucket traps may be used to take only hagfish under this article.

(b) No more than a total of 500 Korean traps or a total of 200 bucket traps may be possessed aboard a vessel or in the water or combination thereof.

(c) No permittee may possess both Korean traps or bucket traps and other types of traps aboard a vessel at the same time. When Korean traps or bucket traps are being used or possessed aboard a vessel, no species of finfish other than hagfish shall be taken, possessed aboard, or sold for commercial purposes.

(d) Popups shall not be used on buoy lines attached to Korean traps or bucket traps, and shall not be possessed by a commercial fisherman aboard a vessel when taking hagfish.

SEC. 23. Section 9001.7 of the Fish and Game Code is amended to read:

9001.7. Finfish, other than sablefish and hagfish, may be taken under a general trap permit if all of the following criteria are also met:

(a) Every person aboard the vessel possesses a valid general trap permit that has not been suspended or revoked.

(b) If nearshore species are present, at least one person aboard the vessel possesses a valid nearshore fishery permit and a nearshore fishery trap endorsement that has not been suspended or revoked.

(c) If deeper nearshore species are present, at least one person aboard the vessel possesses a valid deeper nearshore species fishery permit that has not been suspended or revoked.

(d) During the period from one hour after sunset to one hour before sunrise, finfish traps that are left in the water shall be unbaited with the door secured open. If, for reasons beyond the control of the permittee, all trap doors cannot be secured open prior to one hour after sunset, the permittee shall immediately notify the department.

(e) Popups shall not be used on buoy lines attached to finfish traps, and shall not be possessed aboard a vessel when taking finfish under a general trap permit.

(f) Trap destruction devices used on finfish traps shall conform to the current regulatory requirements for those devices pursuant to Section 9003 and as adopted by the commission.

(g) No finfish traps shall be set within 750 feet of any pier, breakwall, or jetty in District 6, 7, 17, 18, 19, 19A, 19B, 20, 20A, 20B, or 21.

(h) No more than 50 finfish traps may be used in state waters along the mainland shore.

(i) The mesh of any finfish trap used pursuant to this section shall measure not less than two inches by two inches.

(j) The following fish shall not be used as bait in finfish traps:

(1) Lobster.

(2) Crabs of the genus cancer, except rock crab, yellow crab, and red crab, as identified in Section 8282, which may be used as bait under the authority of a rock crab trap permit issued pursuant to Section 8282.

(3) Any other finfish or invertebrate to which a minimum size limit applies that is used or possessed in a condition so that its size can not be determined.

(k) Lobster may be possessed aboard or landed from any vessel on which finfish are also present, if every person aboard the vessel has a valid lobster permit that has not been suspended or revoked and complies with Article 5 of Chapter 2 of the Fish and Game Code, this article, and the regulations adopted pursuant thereto.

SEC. 24. Section 9001.8 of the Fish and Game Code is amended to read:

9001.8. Sablefish may be taken under a general trap permit in ocean waters between a line extending due west true from Point Arguello in Santa Barbara County and the United States-Mexico international boundary line, if all of the following criteria are also met:

(a) The trap shall be six feet or less in its greatest dimension.

(b) The mesh of any trap used for sablefish pursuant to this section shall measure not less than two inches by two inches.

(c) The traps may be used only in waters 200 fathoms or deeper.

(d) No permittee may possess aboard a vessel at the same time, sablefish traps and any other commercial fishing gear, except that spot prawn traps may be possessed during spot prawn trap open fishing periods as established by the commission and if the permittee has a valid spot prawn trap vessel permit that has not been suspended or revoked.

SEC. 25. Section 9006 of the Fish and Game Code is amended to read:

9006. Every trap used to take finfish or crustaceans shall be marked with a buoy. Each buoy shall be marked to identify the operator as follows:

(a) For a trap used to take lobster the commercial fishing license identification number followed by the letter ''P.''

(b) For a trap used to take Dungeness crab or hagfish, the commercial fishing license identification number only.

(c) For a trap used to take finfish other than sablefish or hagfish, the commercial fishing license identification number followed by the letter ''Z.''

(d) For a trap used to take sablefish, the commercial fishing license identification number followed by the letter ''B.''

SEC. 26. Section 9027 is added to the Fish and Game Code, to read:

9027. (a) (1) Notwithstanding Section 9026, 9028, or 9029, in the area described in subdivision (b), it is unlawful to use more than 150 hooks on a vessel to take a fish for commercial purposes when using fishing lines authorized pursuant to this article.

(2) In the area described in subdivision (b), not more than 15 hooks shall be attached to any one fishing line, and no fishing line shall be

attached to another fishing line, while those lines are being used for commercial fishing pursuant to this article except that a single troll line with not more than 30 hooks may be used to take California halibut.

(3) Each fishing line used pursuant to this article that is not attached to a vessel fishing in the area described in subdivision (b) shall be buoyed and the commercial fishing license identification number issued pursuant to Section 7850 to the permittee who is using the fishing line shall be marked on, and visible on the upper one-half of each buoy, in numbers at least two inches high.

(b) This section applies only to waters within one mile of shore within Fish and Game Districts 6, 7, and 10, but not including ocean waters in Fish and Game District 7 between a line extending 203 degrees magnetic from Gitchell Creek and a line extending 252 degrees magnetic from False Cape in Humboldt County and not including ocean waters in Fish and Game District 10 between a line extending 245 degrees magnetic from the most westerly point of the west point of the Point Reyes headlands in Marin County and a line extending due west magnetic from Point Bolinas in Marin County.

SEC. 27. Section 9027.5 is added to the Fish and Game Code, to read:

9027.5. (a) (1) Notwithstanding Section 9026, 9028, or 9029 in the area described in subdivision (b), it is unlawful to use more than 150 hooks on a vessel to take fish for commercial purposes when using fishing lines authorized pursuant to this article.

(2) In the area described in subdivision (b), not more that 15 hooks shall be attached to any one fishing line, and no fishing line shall be attached to another fishing line, while those lines are being used for commercial fishing pursuant to this article.

(3) Each fishing line used pursuant to this article that is not attached to a vessel fishing in the area described in subdivision (b) shall be buoyed and the commercial fishing license identification number issued pursuant to Section 7852 to the permittee who is using the fishing line shall be marked on, and visible on the upper one-half of each buoy, in numbers not less than two inches in height.

(b) This section applies only to waters within one mile of the mainland shore in Fish and Game Districts 17, 18, and 19.

(c) Subdivision (a) does not apply to persons who are fishing south of a line extending due west from Point Conception and who are fishing for halibut, white sea bass, sharks, skates, or rays. The exemption in this subdivision does not apply if all of the fish possessed by persons aboard the vessel does not consist of at least 80 percent by number of halibut, white sea bass, sharks, skates, and rays.

SEC. 28. Section 9029.5 is added to the Fish and Game Code, to read:

9029.5. Notwithstanding Sections 9025.5, 9026, and 9029, it is unlawful to use set lines, vertical fishing lines, or troll lines to take fish for commercial purposes within one mile of the nearest point of land on the mainland shore in Fish and Game District 7 or 10 from sunset on Friday to sunset on the following Sunday or from sunset of the day before a state recognized legal holiday until sunset on that holiday. For the purposes of this subdivision, a ''set line'' is a fishing line that is anchored to the bottom on each end and is not free to drift with the tide or current and a ''vertical fishing line'' is a fishing line that is anchored to the ocean bottom at one end and attached at the other end on the surface to a fishing vessel or a buoy. This section does not apply to the taking of salmon or California halibut for commercial purposes.

SEC. 29. Section 13005 of the Fish and Game Code is amended to read:

13005. (a) Notwithstanding Section 13001, the fees collected from lifetime sportsman's licenses and privileges issued pursuant to Section 714, lifetime hunting licenses and privileges issued pursuant to Section 3031.2, and lifetime sport fishing licenses and privileges issued pursuant to Section 7149.2 shall be deposited as follows:

(1) Twenty dollars ($20) from the initial issuance of each lifetime license shall be deposited in the Fish and Game Preservation Fund for use in accordance with Section 711.

(2) The balance of the fees collected shall be deposited in the Lifetime License Trust Account which is hereby created in the Fish and Game Preservation Fund. Except as provided in this section, that principal amount of the money in the account from the fee for a lifetime license shall not be used, except for investment.

(b) The money in the Lifetime License Trust Account may be transferred and invested through the Surplus Money Investment Fund and all interest shall accrue to the account pursuant to subdivision (g) of Section 16475 of the Government Code.

(c) Upon issuance of a lifetime license or lifetime privilege issued pursuant to Section 714, 3031.2, or 7149.2, the department shall transfer the following amounts from the Lifetime License Trust Account to the Fish and Game Preservation Fund:

(1) Twenty-nine dollars and twenty-five cents ($29.25) for an annual resident hunting license or an annual resident sport fishing license.

(2) Seven dollars and twenty-five cents ($7.25) for a junior hunting license.

(3) Nine dollars and twenty-five cents ($9.25) for one second-rod stamp or validation issued pursuant to Section 7149.4 or Section 7149.45.

(4) Two dollars and fifty cents ($2.50) for one sport fishing ocean enhancement stamp or validation issued pursuant to subdivision (a) of Section 6596 or subdivision (a) of Section 6596.1.

(5) Three dollars and fifty cents ($3.50) for one Bay-Delta sport fishing enhancement stamp or validation issued pursuant to Section 7360 or Section 7360.1.

(6) Three dollars and seventy-five cents ($3.75) for one steelhead trout catch report-restoration card issued pursuant to Section 7380.

(7) One dollar ($1) for one salmon punchcard issued pursuant to regulations adopted by the commission.

(8) Nineteen dollars and twenty-five cents ($19.25) for a deer tag application issued pursuant to subdivision (a) of Section 4332.

(9) Eight dollars and seventy-five cents ($8.75) for five wild pig tags issued pursuant to Section 4654.

(10) Ten dollars ($10) for one state duck stamp or validation issued pursuant to Section 3700 or 3700.1.

(11) Six dollars and twenty-five cents ($6.25) for one upland game bird stamp or validation issued pursuant to Section 3682 or 3682.1.

SEC. 30. Section 15103 of the Fish and Game Code is amended to read:

15103. (a) In addition to the fees specified in Section 15101, a surcharge fee of four hundred twelve dollars ($412) shall be paid at the time of registration by the owner of an aquaculture facility if the gross annual sales of aquaculture products of the facility during the prior calendar year exceed twenty-five thousand dollars ($25,000).

(b) Each registered aquaculturist shall maintain sales and production records which shall be made available upon request of the department to assist the department in the administration of this chapter.

(c) Any person who fails to pay the surcharge fee required in this section at the time of registration shall be assessed a delinquency penalty pursuant to Section 15104.

(d) The surcharge imposed pursuant to this section shall be applicable to the 2004 registration year and shall be adjusted annually thereafter pursuant to Section 713.

SEC. 31. Section 15104 of the Fish and Game Code is amended to read:

15104. (a) If any person engages in the business of aquaculture, as regulated under this division, without having paid the registration fee or surcharge fee within one calendar month of the commencement of business, or, for renewal of registration, on or before April 1 of the registration year, the fees are delinquent.

(b) A penalty shall be paid at the time of registration for any fees that are delinquent in the amount of fifty dollars ($50).

(c) The penalty imposed pursuant to subdivision (b) shall be applicable to the 2005 registration year, and shall be adjusted thereafter pursuant to Section 713.

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 432

An act to amend Section 130054.1 of the Public Utilities Code, relating to transportation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 130054.1 of the Public Utilities Code is amended to read:

130054.1. The Ventura County Transportation Commission shall consist of the following members:

(1) Five members of the Ventura County Board of Supervisors.

(2) One member from each incorporated city within Ventura County who shall be the mayor of the city or a member of its city council. The term of a member under this subdivision terminates when he or she ceases to hold that office or when replaced by the city council.

(3) One citizen member appointed by the Ventura County Board of Supervisors, who shall not be an elected official, but who shall be a resident of Ventura County.

(4) One citizen member appointed by the Ventura County City Selection Committee, who shall not be an elected official, but who shall be a resident of Ventura County.

(5) One nonvoting member appointed by the Governor.

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 are the result of a program for which legislative authority was requested by

that local agency or school district, within the meaning of Section 17556 of the Government Code and Section 6 of Article XIII B of the California Constitution.

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

The Ventura County Transportation Commission faces a significant financial shortfall in funding from the State Highway Account resulting from the suspension of allocations for projects in the county. This financial shortfall will have a significant impact on the commission's ability to meet its responsibilities to the general public to provide funding for safe and efficient transportation systems and projects. To adequately address this issue in a timely and efficient manner, the County of Ventura and every city in the county must be represented on the commission to consider and act on alternative funding strategies to meet the countywide transportation priorities and needs. Therefore, it is necessary that this act take effect immediately to provide this membership on the commission.

CHAPTER 433

An act to amend Sections 3237 and 3258 of the Public Resources Code, relating to natural resources.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 3237 of the Public Resources Code is amended to read:

3237. (a) (1) The supervisor or district deputy may order the plugging and abandonment of a well that has been deserted whether or not any damage is occurring or threatened by reason of that deserted well. The supervisor or district deputy shall determine from credible evidence whether a well is deserted.

(2) For purposes of paragraph (1), ''credible evidence'' includes, but is not limited to, the operational history of the well, the response or lack of response of the operator to inquiries and requests from the supervisor or district deputy, the extent of compliance by the operator with the requirements of this chapter, and other actions of the operator with regard to the well.

(3) A rebuttable presumption of desertion arises in any of the following situations:

(A) If a well has not been completed to production or injection and drilling machinery have been removed from the well site for at least six months.

(B) If a well's production or injection equipment has been removed from the well site for at least two years.

(C) If an operator has failed to comply with an order of the supervisor within the time provided by the order or has failed to challenge the order on a timely basis.

(D) If an operator fails to designate an agent as required by Section 3200.

(E) If a person who is to acquire a well that is subject to a purchase, transfer, assignment, conveyance, exchange, or other disposition fails to comply with Section 3202.

(F) If an operator has failed to maintain the access road to a well site passable to oilfield and emergency vehicles.

(4) The operator may rebut the presumptions of desertion set forth in paragraph (3) by demonstrating with credible evidence compliance with this division and that the well has the potential for commercial production, including specific and detailed plans for future operations, and by providing a reasonable timetable for putting those plans into effect. The operator may rebut the presumption set forth in subparagraph (F) of paragraph (3) by repairing the access road.

(b) An order to plug and abandon a deserted well may be appealed to the director pursuant to the procedures specified in Article 6 (commencing with Section 3350).

(c) (1) The current operator, as determined by the records of the supervisor, of a deserted well that produced oil, gas, or other hydrocarbons or was used for injection is responsible for the proper plugging and abandonment of the well. If the supervisor determines that the current operator does not have the financial resources to fully cover the cost of plugging and abandoning the well, the immediately preceding operator shall be responsible for the cost of plugging and abandoning the well.

(2) The supervisor may continue to look seriatim to previous operators until an operator is found that the supervisor determines has the financial resources to cover the cost of plugging and abandoning the well. However, the supervisor may not hold an operator responsible that made a valid transfer of ownership of the well prior to January 1, 1996.

(3) For purposes of this subdivision, ''operator'' includes a mineral interest owner who shall be held jointly liable for the well if the mineral interest owner has or had leased or otherwise conveyed the working interest in the well to another person, if in the lease or other conveyance,

the mineral interest owner retained a right to control the well operations that exceeds the scope of an interest customarily reserved in a lease or other conveyance in the event of a default.

(4) No prior operator is liable for any of the costs of plugging and abandoning a well by a subsequent operator if those costs are necessitated by the subsequent operator's illegal operation of a well.

(5) If the supervisor is unable to determine that an operator that acquired ownership of a well after January 1, 1996, has the financial resources to fully cover the costs of plugging and abandonment, the supervisor may undertake plugging and abandonment pursuant to Article 4.2 (commencing with Section 3250).

(d) (1) Notwithstanding any other provision of this chapter, the supervisor or district deputy, at his or her sole discretion, may determine that a well that has been idle for 25 years or more and that fails to meet either of the following conditions is conclusive evidence of desertion, and may order the well abandoned:

(A) The operator is operating in compliance with a valid idle well management plan that is on file with the supervisor pursuant to paragraph (4) of subdivision (a) of Section 3206 or is covered by an indemnity bond provided under Section 3204, subdivision (c) of Section 3205, or subdivision (a) of Section 3205.2.

(B) The well meets the relevant testing standards required by the district's Idle Well Planning and Testing Program and Section 1723.9 of Title 14 of the California Code of Regulations.

(2) The supervisor or district deputy shall provide the operator a 90-day notice of warning once a determination has been reached pursuant to this subdivision that a well has been deserted. An operator may rebut the determination, made pursuant to paragraph (1), of the supervisor or district deputy by demonstrating compliance with subparagraphs (A) and (B) of paragraph (1).

(3) An order to plug and abandon a deserted well under this section due to the supervisor's or district deputy's determination of an operator's noncompliance with either subparagraph (A) or (B) of paragraph (1) may be appealed to the director pursuant to the procedures specified in Article 6 (commencing with Section 3350).

SEC. 2. Section 3258 of the Public Resources Code is amended to read:

3258. (a) The division shall not make expenditures pursuant to this article that exceed the following sum in any one fiscal year:

(1) One million dollars ($1,000,000) commencing on July 1, 1999, for the 1999–2000 fiscal year, and continuing for 10 fiscal years thereafter.

(2) Five hundred thousand dollars ($500,000), commencing with the 2010–11 fiscal year.

(b) On October 1, 2000, the department shall report to the Legislature on the number of orphan wells successfully abandoned in the 1999–2000 fiscal year, the number of orphan wells remaining, and the estimated costs of abandoning those orphan wells. The department shall also include in this report a timeline for future orphan well abandonment with a specific schedule of goals. On October 1, 2009, the department shall report to the Legislature on its progress toward meeting these goals of orphan well abandonment.

CHAPTER 434

An act to add Section 128766 to the Health and Safety Code, relating to health facilities.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 128766 is added to the Health and Safety Code, to read:

128766. (a) Notwithstanding Section 128765 or any other provision of law, the office, upon request, shall disclose information collected pursuant to subdivision (g) of Section 128735 and Sections 128736 and 128737, to any California hospital and any local health department or local health officer in California as set forth in Part 3 (commencing with Section 101000) of Division 101. The office shall disclose this same information to the National Center for Health Statistics or any other unit of the Centers for Disease Control and Prevention, or the Agency for Healthcare Research and Quality of the United States Department of Health and Human Services, for the purposes of conducting a statutorily authorized activity. All disclosures made pursuant to this section shall be consistent with the standards and limitations applicable to the disclosure of limited data sets as provided in Section 164.514 of Part 164 of Title 45 of the Code of Federal Regulations, relating to the privacy of health information.

(b) Any hospital that receives information pursuant to this section shall not disclose that information to any person or entity, except in response to a court order, search warrant, or subpoena, or as otherwise required or permitted by the federal medical privacy regulations contained in Parts 160 and 164 of Title 45 of the Code of Federal Regulations. In no case shall a hospital, contractor, or subcontractor

reidentify or attempt to reidentify any information received pursuant to this section.

(c) No disclosure shall be made pursuant to this section if the director of the office has determined that the disclosure would create an unreasonable risk to patient privacy. The director shall provide a written explanation of the determination to the requester within 60 days.

CHAPTER 435

An act to add Section 31874.6 to the Government Code, relating to county employees' retirement.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 31874.6 is added to the Government Code, to read:

31874.6. (a) Notwithstanding any other provision of law, on an annual basis, the board of retirement may, with the approval of the county board of supervisors, grant a cost-of-living adjustment on a prefunded basis to the retirement allowances, optional death allowances, or annual death allowances payable to or on account of eligible members. The action by the board of retirement may specify a date as of which the adjustment shall be effective and, if no effective date is specified, the adjustment shall be made in allowances payable for the time commencing on the first day of the month following the action by the board of retirement or approval by the county board of supervisors, whichever is later.

(b) Before the board of retirement may grant an adjustment pursuant to this section, the total costs of the adjustment shall be determined by a qualified actuary and the board shall determine, with the advice of the actuary, that full funding of the adjustment can be provided from earnings of the retirement fund that are in excess of the total interest credited to contributions and reserves plus 1 percent of the total assets of the retirement fund.

(c) The adjustment provided by this section shall be payable only to those retired members, survivors, beneficiaries, or successors in interest whose accumulated loss of purchasing power equals or exceeds 20 percent as of January 1 of the year the board of retirement takes action pursuant to this section. Loss of purchasing power shall be determined

by the board of retirement based on the difference between the following:

(1) The initial retirement allowance, optional death allowance, or annual death allowance as it would have been increased by the cumulative total effect of the annual changes, rounded to the nearest one-half of 1 percent, in the Consumer Price Index for All Urban Consumer for the area in which the county seat is situated.

(2) The retirement allowance, optional death allowance, or annual death allowance as actually increased by cost-of-living adjustments previously granted with respect to the allowance.

(d) A cost-of-living adjustment granted pursuant to this section shall become part of the retirement allowance, optional death allowance, or annual death allowance to be increased by any subsequent cost-of-living adjustments. The granting of an increase pursuant to this section in any particular year does not create any continuing entitlement to additional increases in subsequent years, and does not create any claim by a retired member, survivor, beneficiary, or successor in interest against the county, district, or retirement fund for any increase in any allowance paid or payable prior to the effective date of the action by the board of retirement pursuant to this section.

(e) This section shall only be applicable in a county of the 19th class, as defined by Sections 28020 and 28040, as amended by Chapter 1204 of the Statutes of 1971.

CHAPTER 436

An act to amend Section 32814 of the Food and Agricultural Code, relating to milk.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 32814 of the Food and Agricultural Code is amended to read:

32814. (a) In addition to any other penalty or fine prescribed by law, including, but not limited to, denial, suspension, or revocation of any license, permit or registration pursuant to Sections 236 and 32811, a dairy producer found to have produced milk in violation of the drug residue provisions of this chapter shall be subject to a civil penalty as follows:

(1) For the first drug residue violation in a 12-month period that caused the condemnation of a bulk raw milk pickup tanker load, the dairy producer responsible for the condemnation shall be subject to a penalty of two hundred fifty dollars ($250).

(2) For the second or subsequent drug residue violation in a 12-month period that caused the condemnation of a bulk raw milk pickup tanker load, the dairy producer responsible for the condemnation shall be subject to a penalty not to exceed five hundred dollars ($500).

(b) In addition to the penalties specified in subdivision (a), a dairy producer found to have produced milk in violation of the drug residue provisions of this chapter shall complete a drug residue prevention program, as prescribed by the secretary, within 30 days after receipt of written notice.

(c) In addition to the penalties specified in subdivisions (a) and (b), a dairy producer whose drug residue contaminated milk is responsible for the condemnation of a bulk raw milk pickup tanker load shall be civilly liable to all other producers with milk in the same bulk raw milk pickup tanker load for the full value of their portion of the contaminated milk load.

(d) In addition to the penalties specified in subdivisions (a), (b), and (c), a dairy producer found to have produced milk in violation of the drug residue provisions of this chapter shall be liable to the department for reasonable investigation and enforcement costs, including attorney's fees.

(e) Nothing in this section shall be construed to limit the secretary's discretion to impose any one, or all, or any combination of remedies or penalties available by statute or regulation.

CHAPTER 437

An act to amend Sections 23009, 23356, and 25503.6 of, and to repeal Section 23323 of, the Business and Professions Code, relating to alcoholic beverages, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 23009 of the Business and Professions Code is amended to read:

23009. ''Licensee'' means any person holding a license, a permit, a certification, or any other authorization issued by the department.

SEC. 2. Section 23323 of the Business and Professions Code is repealed.

SEC. 3. Section 23356 of the Business and Professions Code is amended to read:

23356. Any manufacturer's or winegrower's license authorizes the person to whom it is issued to become a manufacturer or producer of the alcoholic beverage specified in the license, and to do any of the following:

(a) Whether manufactured or produced by him or her or any other person, to package, rectify, mix, flavor, color, label, and export the alcoholic beverage specified in the license.

(b) To sell only those alcoholic beverages as are packaged by or for him or her only to persons holding wholesaler's, manufacturer's, winegrower's, manufacturer's agent's, or rectifier's licenses authorizing the sale of those alcoholic beverages and to persons who take delivery of those alcoholic beverages within this state for delivery or use without the state.

(c) To deal in warehouse receipts for the alcoholic beverage specified in the license.

SEC. 4. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, or a distilled spirits manufacturer, or distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located in San Bernardino County.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(F) An outdoor stadium and a fully enclosed arena with fixed seating capacities in excess of 10,000 seats located in Fresno County.

(G) An athletic and entertainment complex of not less than 50 acres that includes within its boundaries an outdoor stadium with a fixed seating capacity of at least 8,000 seats and a second outdoor stadium with a fixed seating capacity of at least 3,500 seats located within Riverside County.

(H) An outdoor stadium with a fixed seating capacity in excess of 1,500 seats located in Tulare County.

(I) A motorsports entertainment complex of not less than 50 acres that includes within its boundaries an outdoor speedway with a fixed seating capacity of at least 50,000 seats, located within San Bernardino County.

(J) An exposition park, owned or operated by a bona fide nonprofit organization, of not less than 400 acres with facilities including a grandstand with a seating capacity of at least 8,000 people, at least one exhibition hall greater than 100,000 square feet, and at least four exhibition halls, each greater than 30,000 square feet, located in the City of Pomona or the City of La Verne in Los Angeles County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the exposition park, stadium, or arena owned by the on-sale licensee. With respect to an exposition park as described in subparagraph (J) of paragraph (1) that includes at least one hotel, the advertising space or time shall not be displayed on or in any hotel located in the exposition park, or purchased in connection with the operation of any hotel located in the exposition park.

(4) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits manufacturer or distilled spirits manufacturer's agent that purchased the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

(c) Any beer manufacturer or holder of a winegrower's license, any distilled spirits manufacturer, or any distilled spirits manufacturer's

agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill all or part of those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space, time, or costs involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, a holder of a winegrower's license, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, ''beer manufacturer'' includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 5. Section 25503.6 of the Business and Professions Code is amended to read:

25503.6. (a) Notwithstanding any other provision of this chapter, a beer manufacturer, the holder of a winegrower's license, a distilled spirits rectifier, or a distilled spirits manufacturer, or distilled spirits manufacturer's agent may purchase advertising space and time from, or on behalf of, an on-sale retail licensee subject to all of the following conditions:

(1) The on-sale licensee is the owner, manager, agent of the owner, assignee of the owner's advertising rights, or the major tenant of the owner of any of the following:

(A) An outdoor stadium or a fully enclosed arena with a fixed seating capacity in excess of 10,000 seats located in Sacramento County or Alameda County.

(B) A fully enclosed arena with a fixed seating capacity in excess of 18,000 seats located in Orange County or Los Angeles County.

(C) An outdoor stadium or fully enclosed arena with a fixed seating capacity in excess of 8,500 seats located in Kern County.

(D) An exposition park of not less than 50 acres that includes an outdoor stadium with a fixed seating capacity in excess of 8,000 seats

and a fully enclosed arena with an attendance capacity in excess of 4,500 people, located in San Bernardino County.

(E) An outdoor stadium with a fixed seating capacity in excess of 10,000 seats located in Yolo County.

(F) An outdoor stadium and a fully enclosed arena with fixed seating capacities in excess of 10,000 seats located in Fresno County.

(G) An athletic and entertainment complex of not less than 50 acres that includes within its boundaries an outdoor stadium with a fixed seating capacity of at least 8,000 seats and a second outdoor stadium with a fixed seating capacity of at least 3,500 seats located within Riverside County.

(H) An outdoor stadium with a fixed seating capacity in excess of 1,500 seats located in Tulare County.

(I) A motorsports entertainment complex of not less than 50 acres that includes within its boundaries an outdoor speedway with a fixed seating capacity of at least 50,000 seats, located within San Bernardino County.

(J) An exposition park, owned or operated by a bona fide nonprofit organization, of not less than 400 acres with facilities including a grandstand with a seating capacity of at least 8,000 people, at least one exhibition hall greater than 100,000 square feet, and at least four exhibition halls, each greater than 30,000 square feet, located in the City of Pomona or the City of La Verne in Los Angeles County.

(2) The outdoor stadium or fully enclosed arena described in paragraph (1) is not owned by a community college district.

(3) The advertising space or time is purchased only in connection with the events to be held on the premises of the exposition park, stadium, or arena owned by the on-sale licensee. With respect to an exposition park as described in subparagraph (J) of paragraph (1) that includes at least one hotel, the advertising space or time shall not be displayed on or in any hotel located in the exposition park, or purchased in connection with the operation of any hotel located in the exposition park.

(4) The on-sale licensee serves other brands of beer distributed by a competing beer wholesaler in addition to the brand manufactured or marketed by the beer manufacturer, other brands of wine distributed by a competing wine wholesaler in addition to the brand produced by the winegrower, and other brands of distilled spirits distributed by a competing distilled spirits wholesaler in addition to the brand manufactured or marketed by the distilled spirits rectifier, the distilled spirits manufacturer or the distilled spirits manufacturer's agent that purchased the advertising space or time.

(b) Any purchase of advertising space or time pursuant to subdivision (a) shall be conducted pursuant to a written contract entered into by the beer manufacturer, the holder of the winegrower's license, the distilled

spirits rectifier, the distilled spirits manufacturer, or the distilled spirits manufacturer's agent and the on-sale licensee.

(c) Any beer manufacturer or holder of a winegrower's license, any distilled spirits rectifier, any distilled spirits manufacturer, or any distilled spirits manufacturer's agent who, through coercion or other illegal means, induces, directly or indirectly, a holder of a wholesaler's license to fulfill all or part of those contractual obligations entered into pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space, time, or costs involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(d) Any on-sale retail licensee, as described in subdivision (a), who, directly or indirectly, solicits or coerces a holder of a wholesaler's license to solicit a beer manufacturer, a holder of a winegrower's license, a distilled spirits rectifier, a distilled spirits manufacturer, or a distilled spirits manufacturer's agent to purchase advertising space or time pursuant to subdivision (a) or (b) shall be guilty of a misdemeanor and shall be punished by imprisonment in the county jail not exceeding six months, or by a fine in an amount equal to the entire value of the advertising space or time involved in the contract, whichever is greater, plus ten thousand dollars ($10,000), or by both imprisonment and fine. The person shall also be subject to license revocation pursuant to Section 24200.

(e) For the purposes of this section, ''beer manufacturer'' includes any holder of a beer manufacturer's license, any holder of an out-of-state beer manufacturer's certificate, or any holder of a beer and wine importer's general license.

SEC. 6. The Legislature hereby finds and declares, with respect to Sections 4 and 5 of this act, that a special statute is necessary and that a statute of general applicability cannot be enacted within the meaning of Section 16 of Article IV of the California Constitution, because of unique circumstances and concerns applicable to certain facilities in Los Angeles County.

SEC. 7. Section 5 of this bill incorporates amendments to Section 25503.6 of the Business and Professions Code proposed by both this bill and SB 1647. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 25503.6 of the Business and Professions Code, and (3) this bill is enacted after SB 1647, in which case Section 4 of this bill shall not 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.

SEC. 9. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order that advertising space and time may be purchased with respect to events scheduled in 2004 from, or on behalf of, a retail licensee who is authorized to sell alcoholic beverages, it is necessary for this act to take effect immediately.

CHAPTER 438

An act to amend Sections 8880.22, 8880.30, 8880.46, and 8880.57 of the Government Code, relating to the California State Lottery.

[Approved by Governor September 9, 2004. Filed with Secretary of State September 9, 2004.]

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

SECTION 1. Section 8880.22 of the Government Code is amended to read:

8880.22. The Commission shall make quarterly reports of the operation of the Lottery to the Governor, the Attorney General, the Controller, the Treasurer, and the Legislature. The reports shall be due 75 days after the close of the quarter for which the information is being required. The reports shall include a full and complete statement of lottery revenues, prize disbursements, expenses, net revenues, and all other financial transactions involving lottery funds, including a statement of assets, statement of revenues, expenses, changes in net assets, and changes in financial position with all attached financial notes.

SEC. 2. Section 8880.30 of the Government Code is amended to read:

8880.30. The Commission shall promulgate regulations that specify the method for determining winners in each lottery game, provided:

(a) A lottery game may be based on the results of a horse race with the consent of the association conducting the race and the California Horse Racing Board. Any compensation received by an association for the use of its races to determine the winners of a lottery game shall be divided equally between commissions and purses.

(b) If a lottery game utilizes a drawing of winning numbers, a drawing among entries, or a drawing among finalists, the drawings shall always be open to the public. No manual or physical selection in the drawings shall be conducted by any employee of the Lottery. Except for computer automated drawings, drawings shall be witnessed by an independent lottery contractor having qualifications established by the Commission. Any equipment used in the drawings shall be inspected by the independent lottery contractor and an employee of the Lottery both before and after the drawings. The drawings and the inspections shall be recorded on both videotape and audiotape.

(c) It is the intent of this chapter that the Commission may use any of a variety of existing or future methods or technologies in determining winners.

SEC. 3. Section 8880.46 of the Government Code is amended to read:

8880.46. After the first nine months of sales to the public, the Commission shall engage an independent firm experienced in security procedures, including, but not limited to, computer security and systems security, to conduct a comprehensive study and evaluation of all aspects of security in the operation of the Lottery. This study shall include, but not be limited to, personnel security, Lottery Game Retailer security, Lottery Contractors security, security of manufacturing operations of Lottery Contractors, security against ticket counterfeiting and alterations and other means of fraudulently winning, security of drawings, computer security, data communications security, data base security, security controls and physical security, security in distribution, security involving validation and payment procedures, security involving unclaimed prizes, security aspects applicable to each particular Lottery Game, security against locating winners in Lottery Games having preprinted winners, and any other aspects of security applicable to the Lottery and its operations. The portion of the report containing the overall evaluation of the Lottery in terms of each aspect of security shall be presented to the Commission, the Governor, the Controller, the Treasurer, the Attorney General, and the Legislature. The portion of the report containing specific recommendations shall be exempt from public disclosure and shall be presented only to the Commission, the Attorney General, the Controller and the Governor. Upon request, all materials and data used in the production of the report shall be made available to the Commission, the Attorney General, the

Controller, and the Governor. Similar audits of security shall be conducted every two years after the completion of the first audit.

SEC. 4. Section 8880.57 of the Government Code is amended to read:

8880.57. In order to allow an evaluation of the competence, integrity, and character of potential Lottery Contractors for the California State Lottery, any person, corporation, trust, association, partnership, or joint venture that submits a bid, proposal, or offer as part of procurement for a contract for any goods or services for the California State Lottery, other than materials, supplies, services, and equipment which are common to the ordinary operations of state agencies, shall comply with each of the following:

(a) Bidders, as required by the Lottery, shall disclose the bidder's name and address and, as applicable, the name and address of the following:

(1) If the bidder is a corporation, the officers, directors, and each owner, directly or indirectly, of any equity security or other ownership interest in the corporation. However, in the case of owners of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to beneficially own 5 percent or more of the publicly held securities need be disclosed.

(2) If the bidder is a trust, the trustee and all persons entitled to receive income or benefit from the trust.

(3) If the bidder is an association, the members, officers, and directors.

(4) If the bidder is a subsidiary, the officers, directors, and stockholders of the parent company thereof. However, in the case of owners of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to beneficially own 5 percent or more of the publicly held securities need be disclosed.

(5) If the bidder is a partnership or joint venture, all of the general partners, limited partners, or joint venturers.

(6) If the parent company, general partner, limited partner, or joint venturer of any bidder is itself a corporation, trust, association, subsidiary, partnership, or joint venture, then the disclosure of information needed to determine ultimate ownership. However, in the case of owners of publicly held equity securities of a publicly traded corporation, only the names and addresses of those known to the corporation to beneficially own 5 percent or more of the publicly held securities need be disclosed.

(7) If the bidder proposes to subcontract any substantial portion of the work to be performed to a subcontractor, then all of the information

required in this section shall be disclosed for the subcontractor as if it were itself a bidder.

(b) After receipt of a bid, proposal, or offer, but prior to the award of a contract, the Commission may require a potential Lottery Contractor to provide any or all of the following information:

(1) A disclosure of all the states and jurisdictions in which the bidder does business, and the nature of that business for each state or jurisdiction.

(2) A disclosure of all the states and jurisdictions in which the bidder has contracts to supply gaming goods or services, including, but not limited to, lottery goods and services, and the nature of the goods or services involved for each state or jurisdiction.

(3) A disclosure of all the states and jurisdictions in which the bidder has applied for, has sought renewal of, has received, has been denied, has pending, or has had revoked a gaming license of any kind, and the disposition in each state or jurisdiction. If any gaming license has not been renewed or any gaming license application has been either denied or has remained pending for more than six months, all of the facts and circumstances underlying this failure to receive a gaming license shall be disclosed.

(4) A disclosure of the details of any conviction or judgment of a state or federal court against the bidder of any gambling-related offense, or criminal offense other than traffic violations.

(5) A disclosure of the details of any bankruptcy, insolvency, or reorganization, or any judgment or pending litigation involving fraud or deceit against the bidder.

(6) A disclosure for each bidder of the employment, residence, educational, and military history since the age of 18 years of any of its owners, directors, members, officers, employees, or agents identified by the Lottery.

(7) A disclosure consolidating all reportable information on all reportable contributions by the bidder to any local, state, or federal political candidate or political committee in this state for the past five years that is reportable under any existing state or federal law.

(8) A disclosure of the identity of any entity with which the bidder has a joint venture or other contractual arrangement to supply any state or jurisdiction with gaming goods or services, including, but not limited to, lottery goods or services; including a disclosure with regard to the entity of all of the information requested under paragraphs (1) to (8), inclusive.

(9) In the instance of a procurement for the printing of lottery tickets, for goods or services involving the receiving or recording of number selections, or for goods or services involving the determination of winners, an additional disclosure consisting of the individual federal and state income tax returns for the past three years and a current individual

financial statement for each bidder and any of the bidder's owners, directors, members, officers, employees, or agents identified by the Lottery. The disclosures provided in this paragraph shall be considered confidential and shall be transmitted directly to the Deputy Director for Security and the Attorney General for their review.

(10) Any additional disclosures and information as may be appropriate for the procurement involved as determined by the Commission.

(c) With respect to the persons or entities described in paragraphs (1) to (7), inclusive, of subdivision (a), the Commission may request the disclosure of any information required in subdivision (b), which shall be relevant to the award of any contract.

(d) No contract with any bidder who has not complied with the disclosure requirements described in this section shall be entered into or be enforceable. Any contract with any lottery contractor who does not comply with these requirements for maintaining the currency of the disclosures during the term of the contract as may be specified in the contract may be terminated by the Commission. In addition, the Commission may deny or cancel a contract with a lottery contractor or any of the persons or entities included in paragraphs (1) to (7), inclusive, of subdivision (a) if any of the following apply:

(1) False statements have been made in any information which is required under this section.

(2) Any of the persons or entities have been convicted of a crime punishable as a felony.

(3) Any of the persons or entities have been convicted of an offense involving dishonesty or any gambling-related offense.

(e) This section shall be construed broadly and liberally to achieve the end of full disclosure of all information necessary to allow for a full and complete evaluation of the competence, integrity, and character of potential suppliers of the California State Lottery Commission.

SEC. 5. The Legislature finds and declares that this act furthers the purpose of the California State Lottery Act of 1984 enacted by Proposition 37 at the November 6, 1984, general election.

CHAPTER 439

An act to add Section 65950.5 to the Government Code, relating to local permits.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 65950.5 is added to the Government Code, to read:

65950.5. (a) If an applicant for a development project for natural gas exploration or production and a public agency agree in writing to expedite the public agency's actions pursuant to Article 3 (commencing with Section 65940) or this article, the public agency may provide the services, contract with a private entity, or employ persons on a temporary basis to perform the services necessary to meet those time limits.

(b) The private entities or persons temporarily employed by the public agency may, pursuant to a contract or agreement with the public agency, perform any of the functions necessary to comply with the requirements of Article 3 (commencing with Section 65940), this article, or local ordinances adopted pursuant to those articles, except those functions reserved by those articles or local ordinances to the legislative body of a local agency.

(c) A public agency may charge the applicant a fee that does not exceed the estimated reasonable cost of providing the service pursuant to this section. A local agency shall comply with Section 66014, Chapter 8 (commencing with Section 66016), and Chapter 9 (commencing with Section 66020).

CHAPTER 440

An act to amend Section 22820 of the Government Code, relating to public employee health benefits, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 22820 of the Government Code, as added by Chapter 69 of the Statutes of 2004, is amended to read:

22820. (a) Upon the death, on or after January 1, 2002, of a firefighter employed by a county, city, city and county, district, or other political subdivision of the state, a firefighter employed by the Department of Forestry and Fire Protection, or a peace officer as defined in Section 830.1, 830.2, 830.3, 830.31, 830.32, 830.33, 830.34, 830.35, 830.36, 830.37, 830.38, 830.39, 830.4, 830.5, 830.55, or 830.6 of the Penal Code, if the death occurred as a result of injury or disease arising

out of and in the course of his or her official duties, the surviving spouse or other eligible family member of the deceased firefighter or peace officer, if uninsured, is deemed to be an annuitant under Section 22760 for purposes of enrollment. All eligible family members of the deceased firefighter or peace officer who are uninsured may enroll in a health benefit plan of the surviving spouse's choice. However, an unmarried child of the surviving spouse is not eligible to enroll in a health benefit plan under this section if the child was not a family member under Section 22775 and regulations pertinent thereto prior to the firefighter's or peace officer's date of death. The employer of the deceased firefighter or peace officer shall notify the board within 10 days of the death of the employee if a spouse or family member may be eligible for enrollment in a health benefit plan under this section.

(b) Upon notification, the board shall promptly determine eligibility and shall forward to the eligible spouse or family member the materials necessary for enrollment. In the event of a dispute regarding whether a firefighter's or peace officer's death occurred as a result of injury or disease arising out of and in the course of his or her official duties as required under subdivision (a), that dispute shall be determined by the Workers' Compensation Appeals Board, subject to the same procedures and standards applicable to hearings relating to claims for workers' compensation benefits. The jurisdiction of the Workers' Compensation Appeals Board under this section is limited to the sole issue of industrial causation and this section does not authorize the Workers' Compensation Appeals Board to award costs against the system.

(c) (1) Notwithstanding any other provision of law, but except as otherwise provided in subdivision (d), the state shall pay the employer contribution required for enrollment under this part for the uninsured surviving spouse of a deceased firefighter or peace officer for life, and the other uninsured eligible family members of a deceased firefighter or peace officer, provided the family member meets the eligibility requirements of Section 22775 and regulations pertinent thereto.

(2) The contribution payable by the state for each uninsured surviving spouse and other uninsured eligible family members shall be adjusted annually and be equal to the amount specified in Section 22871.

(3) The state's contribution under this section shall commence on the effective date of enrollment of the uninsured surviving spouse or other uninsured eligible family members. The contribution of each surviving spouse and eligible family member shall be the total cost per month of the benefit coverage afforded him or her under the plan less the portion contributed by the state pursuant to this section.

(d) The cancellation of coverage by an annuitant, as defined in this section, shall be final without option to reenroll, unless coverage is

canceled because of enrollment in an insurance plan from another source.

(e) For purposes of this section, ''surviving spouse'' means a husband or wife who was married to the deceased firefighter or peace officer on the deceased's date of death and either for a continuous period of at least one year prior to the date of death or prior to the date the deceased firefighter or peace officer sustained the injury or disease resulting in death.

(f) For purposes of this section, ''uninsured'' means that the surviving spouse is not enrolled in an employer-sponsored health plan under which the employer contribution covers 100 percent of the cost of health care premiums.

(g) The board has no duty to identify, locate, or notify any surviving spouse or eligible family member who may be or may become eligible for benefits under this section.

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:

If a firefighter or peace officer who has been married less than one year is killed in the line of duty between the chaptering of this bill and January 1, 2005, it would constitute a grave injustice to deny the surviving spouse full surviving spouse benefits.

CHAPTER 441

An act to amend Sections 31520.5, 31704, and 31789.5 of, to amend and renumber Section 31537 of, and to add Sections 31764.5, 31764.6, and 31764.7 to, the Government Code, relating to county employees' retirement.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 31520.5 of the Government Code is amended to read:

31520.5. (a) Notwithstanding Section 31520.1, in any county subject to Articles 6.8 (commencing with Section 31639) and 7.5 (commencing with Section 31662), the board of retirement may, by majority vote, appoint, from a list of nominees submitted by a qualified retiree organization, an alternate retired member to the office of the

eighth member, who shall serve until the expiration of the current term of the current eighth member. Thereafter, the alternate retired member shall be elected separately by the retired members of the association in the same manner and at the same time as the eighth member is elected. An organization shall be deemed to be a ''qualified retiree organization'' for purposes of this subdivision if a majority of the members of the organization are retired members of the system.

(b) The term of office of the alternate retired member shall run concurrently with the term of office of the eighth member. The alternate retired member shall vote as a member of the board only in the event the eighth member is absent from a board meeting for any cause. If there is a vacancy with respect to the eighth member, the alternate retired member shall fill that vacancy until a successor qualifies. Except as provided in subdivision (c) and as otherwise provided in this subdivision, the alternate retired member shall be entitled to the same rights and privileges and shall have the same responsibilities and access to closed sessions as the eighth member.

(c) The alternate retired member may hold positions on committees of the board independent of the eighth member and may participate in the deliberations of the board or its committees whether or not the eighth member is present, unless prohibited by resolution or regulation of the board.

(d) The alternate retired member shall be entitled to the same compensation as the eighth member for attending a meeting, pursuant to Sections 31521 and 31521.1, whether or not the eighth member is in attendance at those meetings.

(e) If this section is made applicable in any county, by the appointment of an alternate eighth member, the alternate safety member may not sit and act for the eighth member.

SEC. 2. Section 31537 of the Government Code, as added by Section 1 of Chapter 191 of the Statutes of 2003, is amended and renumbered to read:

31592.5. The board shall provide to any organization that is recognized by the board as representing the retired employees of the county or district reasonable advance notice of any proposed changes to the retirement benefits offered by the system or the use or uses of excess funds of the retirement system. The organization shall have a reasonable opportunity to comment prior to any formal action by the board on the proposed changes.

SEC. 3. Section 31704 of the Government Code is amended to read:

31704. If any member elects to have his or her deferred retirement allowance calculated in accordance with Section 31762, 31763, 31764, or 31764.5, he or she shall present his or her election in writing to the

board at least six months prior to the effective date of his or her deferred retirement allowance.

SEC. 4. Section 31764.5 is added to the Government Code, to read:

31764.5. (a) At retirement, a member who elects an optional settlement pursuant to Section 31762, 31763, or 31764 may elect to reduce his or her allowance to provide that if the named beneficiary predeceases the member, the member's allowance shall be adjusted to the amount he or she would have been entitled to receive at retirement if his or her benefit had not been modified by an optional settlement, adjusted by any cost-of-living increases that would have been added to the monthly allowance. The adjusted allowance shall be effective on the first day of the month following the month in which notification of the beneficiary's death is received by the board.

(b) This section may not become operative if, in the opinion of the retirement board and the actuary, the allowances payable under this section would place an additional financial burden on the retirement system.

(c) This section may not become operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 5. Section 31764.6 is added to the Government Code, to read:

31764.6. (a) Notwithstanding Sections 31481 and 31760, optional settlement 5 consists of a retired member's right to elect in writing to have his or her retirement allowance reduced and to designate his or her spouse who is not otherwise eligible to receive a survivor allowance. The survivor allowance shall be determined on an actuarial basis by the reduction in the member's allowance and may not, in the opinion of the board and the actuary, place any additional financial burden on the retirement system.

(b) A member who elected to receive an optional settlement under Section 31762, 31763, or 31764, involving a life contingency of a beneficiary, may elect optional settlement 5 if the beneficiary predeceases the member or, if a former spouse was named, in the event of a dissolution or annulment of the marriage or a legal separation in which the judgment dividing the community property awards the total interest in the retirement system to the retired member.

(c) A member who married at least 12 months prior to the date this section becomes operative may file an election with the board of retirement within 60 days after the operative date. The election shall become effective the first day of the month following receipt of the election by the board. A member who fails to elect within that 60-day period shall retain the right to make an election under this section subject to the waiting period provided in subdivision (d).

(d) Except as provided in subdivision (c), the election under this section shall become effective 12 months after the date it is filed with the board, provided that neither the member nor his or her spouse dies prior to the effective date of the election.

(e) An election under this section is irrevocable.

(f) This section may not become operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 6. Section 31764.7 is added to the Government Code, to read:

31764.7. (a) Notwithstanding any other provision of this chapter, if a retired member elects to have his or her retirement allowance reduced pursuant to Section 31764.6 and if, thereafter, the member's spouse predeceases the member, the member's allowance shall be adjusted to the amount he or she received at retirement, adjusted by any cost-of-living increases that were or would have been added to the monthly allowance. The adjusted allowance shall be effective on the first day of the month following the month in which notification of the spouse's or beneficiary's death is received by the board.

(b) This section may not become operative if, in the opinion of the retirement board and the actuary, the allowances payable under this section would place an additional financial burden on the retirement system.

(c) This section may not become operative until the board of supervisors elects, by resolution adopted by a majority vote, to make this section operative in the county.

SEC. 7. Section 31789.5 of the Government Code is amended to read:

31789.5. (a) Upon the death of any person after retirement and while receiving a retirement allowance from this system, or any superseded system, there shall be paid to his or her estate, or to the beneficiary as he or she shall nominate by written designation duly executed and filed with the board, an amount determined by the board of supervisors. The board of supervisors shall, by resolution adopted by majority vote, fix and determine an amount that may not exceed five thousand dollars ($5,000).

(b) This section applies to every member who dies after this section becomes operative whether he or she has retired before or after the operative date or effective date of this section.

(c) The death benefit provided by this section shall be paid in lieu of a payment under Section 31789 or 31789.1 and may be paid in part, from contributions of the county or district in accordance with Section 31789, and in part, from surplus earnings of the retirement system in accordance with Section 31789.1.

(d) The death benefit provided by this section may, at the election of the board of retirement, be provided through a group life insurance policy if the cost of that policy to the system is the same or less than the cost to the system, county, or district of other methods of providing the benefit.

(e) This section may not be operative in any county until the board of supervisors, by resolution adopted by a majority vote, makes this section applicable in the county and the board of retirement, by resolution adopted by a majority vote, determines that its portion of the cost of the benefits may be financed from surplus earnings of the retirement fund.

(f) Upon adoption, by any county providing benefits pursuant to this section, of Article 5.5 (commencing with Section 31610), only that portion of those benefits that is paid from surplus earnings described in Section 31592.2 shall be paid, instead, from the Supplemental Retiree Benefits Reserve established pursuant to Section 31618.

CHAPTER 442

An act to amend Section 22115 of the Education Code, relating to state teachers' retirement, and making an appropriation therefor.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 22115 of the Education Code, as amended by Section 3 of Chapter 1021 of the Statutes of 2000, is amended to read:

22115. (a) ''Compensation earnable'' means the creditable compensation a person could earn in a school year for creditable service performed on a full-time basis, excluding service for which contributions are credited by the system to the Defined Benefit Supplement Program.

(b) The board may determine compensation earnable for persons employed on a part-time basis.

(c) When service credit for a school year is less than 1.000, compensation earnable shall be the product obtained when creditable compensation paid in that year is divided by the service credit for that year, except as provided in subdivision (d).

(d) When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is at least 0.900 of a year, compensation earnable shall be determined as if all service credit for that year had been earned at the highest pay rate. This

subdivision shall be applicable only for purposes of determining final compensation. When a member earns creditable compensation at multiple pay rates during a school year and service credit at the highest pay rate is less than 0.900 of a year, compensation earnable shall be determined pursuant to subdivision (c).

(e) For purposes of determining compensation earnable for a member employed by a community college prior to July 1, 1996, full time shall be defined pursuant to Section 22138.5 and pursuant to Section 20521 of Title 5 of the California Code of Regulations, as those provisions read on June 30, 1996, if application of that definition will increase the compensation earnable or otherwise enhance the benefits of the member.

(f) The amendments to this section made during the second year of the 1999–2000 Regular Session shall become operative on July 1, 2002, if the revenue limit cost-of-living adjustment computed by the Superintendent of Public Instruction for the 2001–02 fiscal year is equal to or greater than 3.5 percent. Otherwise the amendments to this section made during the second year of the 1999–2000 Regular Session shall become operative on July 1, 2003.

SEC. 2. The sum of one hundred forty thousand dollars ($140,000) is hereby appropriated from the Teachers' Retirement Fund to the Teachers' Retirement Board to fund the one-time administrative costs of this act.

CHAPTER 443

An act to amend Sections 7197, 8617, and 8662 of the Business and Professions Code, relating to structural pest control.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 7197 of the Business and Professions Code is amended to read:

7197. (a) It is an unfair business practice for a home inspector, a company that employs the inspector, or a company that is controlled by a company that also has a financial interest in a company employing a home inspector, to do any of the following:

(1) To perform or offer to perform, for an additional fee, any repairs to a structure on which the inspector, or the inspector's company, has prepared a home inspection report in the past 12 months.

(2) Inspect for a fee any property in which the inspector, or the inspector's company, has any financial interest or any interest in the transfer of the property.

(3) To offer or deliver any compensation, inducement, or reward to the owner of the inspected property, the broker, or agent, for the referral of any business to the inspector or the inspection company.

(4) Accept an engagement to make an inspection or to prepare a report in which the employment itself or the fee payable for the inspection is contingent upon the conclusions in the report, preestablished findings, or the close of escrow.

(5) A home protection company that is affiliated with or that retains the home inspector does not violate this section if it performs repairs pursuant to claims made under the home protection contract.

(b) This section shall not affect the ability of a structural pest control operator to perform repairs pursuant to Section 8505 as a result of a structural pest control inspection.

SEC. 2. Section 8617 of the Business and Professions Code is amended to read:

8617. (a) The board or county agricultural commissioners, when acting pursuant to Section 8616.4, may suspend the right of a structural pest control licensee or registered company to work in a county for up to three working days or, for a licensee, registered company, or an unlicensed individual acting as a licensee, may levy an administrative fine up to one thousand dollars ($1,000) or direct the licensee to attend and pass a board-approved course of instruction at a cost not to exceed the administrative fine, or both, for each violation of this chapter, or Chapter 14.5, or any regulations adopted pursuant to these chapters, or Chapter 2 (commencing with Section 12751), Chapter 3 (commencing with Section 14001), Chapter 3.5 (commencing with Section 14101), or Chapter 7 (commencing with Section 15201) of Division 7 of the Food and Agricultural Code, or any regulations adopted pursuant to those chapters, relating to pesticides. However, any violation determined by the board or the commissioner to be a serious violation as defined in Section 1922 of Title 16 of the California Code of Regulations shall be subject to a fine of not more than five thousand dollars ($5,000) for each violation. Fines collected shall be paid to the Education and Enforcement Account in the Structural Pest Control Education and Enforcement Fund. Suspension may include all or part of the registered company's business within the county based on the nature of the violation, but shall, whenever possible, be restricted to that portion of a registered company's business in a county that was in violation.

(b) A licensee who passes a course pursuant to this section shall not be awarded continuing education credit for that course.

(c) Before a suspension action is taken, a fine levied, or a licensee is required to attend and pass a board-approved course of instruction, the person charged with the violation shall be provided a written notice of the proposed action, including the nature of the violation, the amount of the proposed fine or suspension, or the requirement to attend and pass a board-approved course of instruction. The notice of proposed action shall inform the person charged with the violation that if he or she desires a hearing before the commissioner issuing the proposed action to contest the finding of a violation, that hearing shall be requested by written notice to the commissioner within 20 days of the date of receipt of the written notice of proposed action.

A notice of the proposed action that is sent by certified mail to the last known address of the person charged shall be considered received even if delivery is refused or the notice is not accepted at that address.

If a hearing is requested, notice of the time and place of the hearing shall be given at least 10 days before the date set for the hearing. At the hearing, the person shall be given an opportunity to review the commissioner's evidence and a right to present evidence on his or her own behalf. If a hearing is not requested within the prescribed time, the commissioner may take the action proposed without a hearing.

(d) If the person upon whom the commissioner imposed a fine or suspension or required attendance at a board-approved course of instruction requested and appeared at a hearing before the commissioner, the person may appeal the commissioner's decision to the Disciplinary Review Committee and shall be subject to the procedures in Section 8662.

(e) If a suspension or fine is ordered, it may not take effect until 20 days after the date of the commissioner's decision if no appeal is filed. If an appeal pursuant to Section 8662 is filed, the commissioner's order shall be stayed until 30 days after the Disciplinary Review Committee has ruled on the appeal.

(f) Failure of a licensee or registered company to pay a fine within 30 days of the date of assessment or to comply with the order of suspension, unless the citation is being appealed, may result in disciplinary action being taken by the board.

Where a citation containing a fine is issued to a licensee and it is not contested or the time to appeal the citation has expired and the fine is not paid, the full amount of the assessed fine shall be added to the fee for renewal of that license. A license shall not be renewed without payment of the renewal fee and fine.

Where a citation containing a fine is issued to a registered company and it is not contested or the time to appeal the citation has expired and the fine is not paid, the board shall not sell to the registered company any

inspection stamps, notice of completion stamps, or pesticide use stamps until the assessed fine has been paid.

Where a citation containing the requirement that a licensee attend and pass a board-approved course of instruction is not contested or the time to appeal the citation has expired and the licensee has not attended and passed the required board-approved course of instruction, the licensee's license shall not be renewed without proof of attendance and passage of the required board-approved course of instruction.

(g) Once final action pursuant to this section is taken, no other administrative or civil action may be taken by any state governmental agency for the same violation. However, action taken pursuant to this section may be used by the board as evidence of prior discipline, and multiple local actions may be the basis for statewide disciplinary action by the board pursuant to Section 8620. A certified copy of the order of suspension or fine issued pursuant to this section or Section 8662 shall constitute conclusive evidence of the occurrence of the violation.

(h) Where the board is the party issuing the notice of proposed action to suspend or impose a fine pursuant to subdivision (a) of this section, ''commissioner'' as used in subdivisions (c), (d), and (e) includes the board's registrar.

SEC. 3. Section 8662 of the Business and Professions Code is amended to read:

8662. (a) Whenever the right of a structural pest control licensee or registered company to make pesticide applications is to be suspended or the licensee, registered company, or unlicensed individual is to be fined pursuant to Section 8617, and if the person upon whom the commissioner imposed a fine or suspension requested and appeared at a hearing before the commissioner in accordance with Section 8617, the party to be suspended or fined may appeal to the Disciplinary Review Committee by filing a written appeal with the committee within 30 days of receipt of the fine or suspension order.

(b) The following procedures shall apply to the appeal:

(1) The appeal shall be in writing and signed by the appellant or his or her or its authorized agent, state the grounds for the appeal, and include a copy of the commissioner's decision. The appellant shall file a copy of the appeal with the commissioner at the same time it is filed with the committee.

(2) Any party may, at the time of filing the appeal or within 10 days thereafter, or at a later time prescribed by the committee or its designee, present the record of the hearing, including written evidence that was submitted at the hearing and written argument to the committee stating the grounds for affirming, modifying, or reversing the commissioner's decision.

(3) The committee or its designee may grant oral argument upon application made at the time written arguments are filed. If an application to present an oral argument is granted, written notice of the time and place for the oral argument shall be given each party at least 10 days before the date set therefor. The times may be altered by mutual agreement of the appellant, the commissioner, and the committee.

(4) At any time written evidence is submitted to the committee, a copy shall be immediately provided to the other party.

(5) The committee shall decide the appeal on the record of the hearing, including the written evidence and the written argument described in paragraph (2) that the committee may have received. If the committee finds substantial evidence in the record to support the commissioner's decision, the committee shall affirm the decision.

(6) The committee shall render its written decision within 45 days of the date of appeal or within 15 days from the date of oral arguments, or as soon thereafter as practical.

(7) On an appeal pursuant to this section, the committee may sustain, modify by reducing the time of suspension or the amount of the fine levied, or reverse the decision. A copy of the committee's decision shall be delivered or mailed to each party.

(8) Review of the decision of the committee may be sought by the licensee, registered company, or unlicensed individual pursuant to Section 1094.5 of the Code of Civil Procedure.

CHAPTER 444

An act to amend Sections 47021 and 47026 of the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 47021 of the Food and Agricultural Code is amended to read:

47021. (a) Commencing January 1, 2004, every operator of a certified farmers' market shall remit to the department, within 30 days after the end of each quarter, a fee equal to the number of certified producer certificates and other agricultural producers participating on each market day for the entire previous quarter. The fee shall be established by January 1 of each year by the department upon the receipt of a budget recommendation from the advisory committee. The fee shall

not exceed sixty cents ($0.60) for each certified producer certificate and other agricultural producers participating on each market day. A certified farmers' market may directly recover all or part of the fee from the participating certified and other agricultural producers.

(b) Any operator of a certified farmers' market who fails to pay the required fee within 30 days after the end of the quarter in which it is due, shall pay to the department a monthly interest charge on the unpaid balance and a late penalty charge, to be determined by the department and not to exceed the maximum amount permitted by law.

(c) All fees collected pursuant to this section shall be deposited in the Department of Food and Agriculture Fund. The money generated by the imposition of the fees shall be used, upon appropriation by the Legislature, by the department, to carry out this chapter, including all of the following actions undertaken by the department:

(1) The coordination of the advisory committee.

(2) The evaluation of county enforcement actions and assistance with regard to multiple county enforcement problems.

(3) The adoption of regulations to carry out this chapter.

(4) Hearing appeals from actions taken by county agricultural commissioners to enforce this chapter.

(5) The review of rules or procedures established by a certified farmers' market and the issuance of advisory opinions and the provision of informal hearings pursuant to Section 47004.1 as to whether the rules or procedures are consistent with this chapter and implementing regulations.

(6) The maintenance of a current statewide listing of certified farmers' markets with schedules of operations and locations.

(7) The maintenance of a current statewide listing of certified producers.

(8) The dissemination to all certified farmers' markets information regarding the suspension or revocation of any producer's certificate and the imposition of administrative penalties.

(9) Other actions, including the maintenance of special fund reserves, that are recommended by the advisory committee and approved by the department for the purpose of carrying out this chapter.

(d) This section shall remain in effect only until January 1, 2007, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2007, deletes or extends that date.

SEC. 2. Section 47026 of the Food and Agricultural Code is amended to read:

47026. This article 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 445

An act to amend Sections 25214.12, 25214.13, 25214.14, 25214.15, 25214.16, and 25214.19 of, to amend and renumber the heading of Article 10.3 (commencing with Section 25214.11) of Chapter 6.5 of Division 20 of, and to add Sections 25214.17 and 25214.21 to, the Health and Safety Code, relating to hazardous waste.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. The heading of Article 10.3 (commencing with Section 25214.11) of Chapter 6.5 of Division 20 of the Health and Safety Code is amended and renumbered to read:

Article 10.4. Toxics in Packaging Prevention Act

SEC. 2. Section 25214.12 of the Health and Safety Code is amended to read:

25214.12. For purposes of this article, the following terms have the following meanings:

(a) ''ASTM'' means the American Society for Testing and Materials.

(b) ''Distribution'' means the practice of taking title to a package or a packaging component for promotional purposes or resale. A person involved solely in delivering a package or a packaging component on behalf of a third party is not engaging in distribution.

(c) (1) ''Intentional introduction'' means the act of deliberately utilizing a regulated metal in the formation of a package or packaging component where its continued presence is desired in the final package or packaging component to provide a specific characteristic, appearance, or quality.

(2) ''Intentional introduction'' does not include either of the following:

(A) The use of a regulated metal as a processing agent or intermediate to impart certain chemical or physical changes during manufacturing, where the incidental retention of a residue of that metal in the final package or packaging component is not desired or deliberate, if the final

package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(B) The use of recycled materials as feedstock for the manufacture of new packaging materials, where some portion of the recycled materials may contain amounts of a regulated metal, if the new package or packaging component is in compliance with subdivision (c) of Section 25214.13.

(d) ''Incidental presence'' means the presence of a regulated metal as an unintended or undesired ingredient of a package or packaging component.

(e) ''Manufacturer'' means any person, firm, association, partnership, or corporation producing a package or packaging component.

(f) ''Manufacturing'' means the physical or chemical modification of a material to produce packaging or a packaging component.

(g) ''Package'' means any container, produced either domestically or in a foreign country, providing a means of marketing, protecting, or handling a product, including a unity package, an intermediate package or a shipping container, as defined in the ASTM specification D 996. ''Package'' also includes unsealed receptacles, including carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(h) ''Packaging component'' means any individual assembled part of a package that is produced either domestically or in a foreign country, including, but not necessarily limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, labels, dyes, pigments, adhesives, stabilizers, or any other additives. Tin-plated steel that meets the ASTM specification A 623 shall be considered as a single package component. Electrogalvanized coated steel and hot dipped coated galvanized steel that meet the ASTM qualifications A 591, A 653, A 879, and A 924 shall be treated in the same manner as tin-plated steel.

(i) ''Purchaser'' means a person who purchases and takes title to a package or a packaging component, from a manufacturer or supplier, for the purpose of packaging a product manufactured, distributed, or sold by the purchaser.

(j) ''Recycled material'' means a material that has been separated from solid waste for the purpose of recycling the material as a secondary material feedstock. Recycled materials include paper, plastic, wood, glass, ceramics, metals, and other materials, except that recycled material does not include a regulated metal that has been separated from other materials into its elemental or other chemical state for recycling as a secondary material feedstock.

(k) ''Regulated metal'' means lead, mercury, cadmium, or hexavalent chromium.

(*l*) (1) ''Supplier'' means a person who does or is one or more of the following:

(A) Sells, offers for sale, or offers for promotional purposes, a package or packaging component that is used by any other person to package a product.

(B) Takes title to a package or packaging component, produced either domestically or in a foreign country, that is purchased for resale or promotional purposes.

(C) Acts as an intermediary for the purchase of a package or packaging component for resale from a manufacturer located in another country to a purchaser located in this state, and who may receive a commission or a fee on that sale.

(D) Listed as the importer of record on a United States Customs Service form for an imported package or packaging component.

(2) ''Supplier'' does not include a person involved solely in delivering a package or packaging component on behalf of a third party.

(m) ''Toxics in Packaging Clearinghouse'' means the Toxics in Packaging Clearinghouse (TPCH) of the Council of State Governments.

SEC. 3. Section 25214.13 of the Health and Safety Code is amended to read:

25214.13. (a) Except as provided in Section 25214.14, on and after January 1, 2006, a manufacturer or supplier may not offer for sale or for promotional purposes in this state a package or packaging component that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(b) Except as provided in Section 25214.14, on and after January 1, 2006, a person may not offer for sale or for promotional purposes in this state a product in a package that includes a regulated metal, in the package itself, or in a packaging component, if the regulated metal has been intentionally introduced into the package or packaging component during manufacturing or distribution.

(c) Except as provided in Section 25214.14, on and after January 1, 2006, the sum of the incidental total concentration levels of all regulated metals present in a single-component package or in an individual packaging component may not exceed 100 parts per million by weight.

SEC. 4. Section 25214.14 of the Health and Safety Code is amended to read:

25214.14. A package or a packaging component is exempt from the requirements of Section 25214.13, and shall be deemed in compliance with this article, if the manufacturer or supplier complies with the

applicable documentation requirements specified in Section 25214.15 and the package or packaging component meets any of the following conditions:

(a) The package or packaging component is marked with a code indicating a date of manufacture prior to January 1, 2006.

(b) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process, to comply with the health or safety requirements of a federal or state law.

(c) (1) The package or packaging component contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13 only because of the addition of a recycled material.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(d) (1) A regulated metal has been added to the package or packaging component in the manufacturing, forming, printing, or distribution process for a use for which there is no feasible alternative.

(2) For purposes of this subdivision, ''a use for which there is no feasible alternative'' means a use, other than for purposes of marketing, for which a regulated metal is essential to the protection, safe handling, or function, of the package's contents, and technical constraints preclude the substitution of other materials.

(e) (1) The package or packaging component is reused and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13, and all of the following apply:

(A) The product being conveyed by the package, the package, or packaging component is otherwise regulated under a federal or state health or safety requirement.

(B) The transportation of the packaged product is regulated under federal or state transportation requirements.

(C) The disposal of the package is otherwise performed according to the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(f) (1) The package or packaging component has a controlled distribution and reuse and contains no intentionally introduced regulated metals, but exceeds the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

(g) (1) The packaging or packaging component is a glass or ceramic package or packaging component that has a vitrified label, and that, when tested in accordance with the Waste Extraction Test, described in Appendix II of Chapter 11 (commencing with Section 66261.1) of Division 4.5 of Title 22 of the California Code of Regulations does not exceed 1.0 ppm for cadmium, 5.0 ppm for hexavalent chromium, or 5.0 ppm for lead. A glass or ceramic package or packaging component containing mercury is not exempted pursuant to this subdivision.

(2) This subdivision, and all exemptions provided pursuant to it, expire on January 1, 2010.

SEC. 5. Section 25214.15 of the Health and Safety Code is amended to read:

25214.15. (a) A package or packaging component qualifies for an exemption pursuant to Section 25214.14 only if the manufacturer or supplier prepares, retains and biennially updates documentation containing all of the following information for that package or packaging component:

(1) A statement that the documentation applies to an exemption from the requirements of Section 25214.13.

(2) The name, position, and contact information for the person who is the manufacturer's or supplier's contact person on all matters concerning the exemption.

(3) An identification of the exemption and a reference to the applicable subdivision in Section 25214.14 setting forth the conditions for the exemption.

(4) A description of the type of package or packaging component to which the exemption applies.

(5) Identification of the type and concentration of the regulated metal or metals present in the package or packaging component, and a description of the testing methods used to determine the concentration.

(6) An explanation of the reason for the exemption.

(7) Supporting documentation that fully and clearly demonstrates that the package or packaging component is eligible for the exemption.

(8) The documentation listed in subdivisions (b), (c), (d), (e), (f), (g), or (h), whichever is applicable for the exemption.

(b) If an exemption is being claimed under subdivision (a) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) Date of manufacture.

(2) Estimated time needed to exhaust current inventory.

(3) Alternative package or packaging component that meets the requirements of Section 25214.13.

(c) If an exemption is being claimed under subdivision (b) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation that contains all of the following information for each regulated metal intentionally introduced in the package or packaging component to which the exemption applies:

(1) Identification of the specific federal or state law requiring the addition of the regulated metal to the package or packaging component.

(2) Detailed information that fully and clearly demonstrates that the addition of the regulated metal to the package or packaging component is necessary to comply with the law identified pursuant to paragraph (1).

(3) A description of past, current, and planned future efforts to seek or develop alternatives to eliminate the use of the regulated metal in the package or packaging component.

(4) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to why the alternative is not satisfactory for purposes of achieving compliance with the law identified pursuant to paragraph (1).

(d) If an exemption is being claimed under subdivision (c) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The type and percentage of recycled material or materials added to the package or packaging component.

(2) The type and concentration of each regulated metal contained in each recycled material added to the package or packaging component.

(3) Efforts to minimize or eliminate the regulated metals in the package or packaging component.

(4) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(e) If an exemption is being claimed under subdivision (d) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for each regulated metal intentionally introduced into the package or packaging component to which the exemption applies:

(1) Detailed information and evidence that fully and clearly demonstrates how the regulated metal contributes to, and is essential to, the protection, safe handling, or functioning of the package's contents.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(3) A description of all alternative measures that have been considered, and, for each alternative, an explanation as to the technical

constraints that preclude substitution of the alternative for the use of the regulated metal.

(4) Documentation that the regulated metal is not being used for the purposes of marketing.

(f) If an exemption is being claimed under subdivision (e) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Identification of the federal or state health or safety law regulating the product being conveyed by the package, the package, or the packaging component.

(3) Identification of the federal or state transportation law regulating the transportation of the packaged product.

(4) Information demonstrating that the package is disposed of in accordance with the requirements of this chapter or Chapter 8 (commencing with Section 114960) of Part 9 of Division 104.

(5) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(g) If an exemption is being claimed under subdivision (f) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update documentation containing all of the following information for the package or packaging component to which the exemption applies:

(1) The percentage of reused materials.

(2) Information and evidence that demonstrates that the environmental benefit of the controlled distribution and reuse of the package or packaging component is significantly greater, as compared to the same package or packaging component manufactured in compliance with the applicable maximum concentration level set forth in subdivision (c) of Section 25214.13.

(3) A means of identifying, in a permanent and visible manner, any reusable package or packaging component containing a regulated metal for which the exemption is sought.

(4) A method of regulatory and financial accountability, so that a specified percentage of the reusable packages or packaging components that are manufactured and distributed to other persons are not discarded by those persons after use, but are returned to the manufacturer or identified designees.

(5) A system of inventory and record maintenance to account for reusable packages or packaging components placed in, and removed from, service.

(6) A means of transforming returned packages or packaging components that are no longer reusable into recycled materials for manufacturing, or a means of collecting and managing returned packages or packaging components as waste in accordance with applicable federal and state law.

(7) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(h) If an exemption is being claimed under subdivision (g) of Section 25214.14, the manufacturer or supplier shall prepare, retain, and biennially update the following documentation for the package or packaging component to which the exemption applies:

(1) Applicable test data.

(2) A description of past, current, and planned future efforts to seek or develop alternatives to minimize or eliminate the use of the regulated metal in the package or packaging component.

(i) A manufacturer or supplier shall submit the documentation required pursuant to subdivisions (a) to (h), inclusive, to the department, as follows:

(1) Upon receipt of a written request from the department, the manufacturer or supplier shall, on or before 30 calendar days after the date of receipt, do one of the following:

(A) Submit the required documentation to the department.

(B) Submit a letter to the department indicating the date by which the documentation shall be submitted, which may be no more than 90 calendar days after the date of receipt of the department's request.

(2) If the department finds that the documentation supplied pursuant to paragraph (1) is incomplete or incorrect, the department shall notify the manufacturer or supplier that the documentation is incomplete or incorrect, and the manufacturer or supplier shall submit complete and correct documentation to the department within 60 calendar days after the date of receipt of the notification.

(j) If a manufacturer or supplier fails to comply with subdivision (i) by any of the specified dates in that subdivision, the manufacturer or supplier shall, with respect to the package or packaging component to which the documentation request applies, comply with one of the following:

(1) Immediately cease to offer the package or packaging component for sale or for promotional purposes in this state.

(2) Replace the package or packaging component with a package or packaging component that conforms with the regulated metals limitations specified in Section 25214.13, in accordance with a schedule approved in writing by the department.

(3) Submit complete and correct documentation for the package or packaging component, in accordance with a schedule approved in writing by the department.

SEC. 6. Section 25214.16 of the Health and Safety Code is amended to read:

25214.16. (a) On and after January 1, 2006, each manufacturer or supplier shall furnish a certificate of compliance to the purchaser of a package or packaging component stating that the package or packaging component is in compliance with the requirements of this article. However, if, pursuant to Section 25214.14, the package is exempt from the requirements of Section 25214.13, the certificate of compliance shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturer or supplier. A copy of the certificate of compliance shall be kept on file by the manufacturer or supplier of the package or packaging component.

(b) A purchaser of a package or packaging component subject to subdivision (a) shall retain the certificate of compliance for as long as the package or packaging component is in use by the purchaser.

(c) The manufacturer or supplier shall furnish to the department a copy of the certificate of compliance for each package or packaging component for which an exemption is claimed under Section 25214.14 at the time when a certificate of compliance for that package or packaging component is first furnished to a purchaser. If no exemption is claimed for a package or packaging component, the manufacturer or supplier shall provide to the department upon request a copy of the certificate of compliance for that package or packaging component.

(d) If a manufacturer or supplier of a package or packaging component subject to subdivision (a) reformulates or creates a new package or packaging component, the manufacturer or supplier shall provide the purchaser, and, if the package or packaging component is exempt, the department, with an amended or new certificate of compliance for the reformulated or new package or packaging component.

SEC. 7. Section 25214.17 is added to the Health and Safety Code, to read:

25214.17. (a) Except as provided in subdivision (b), the department, pursuant to the California Public Records Act (Chapter 3.5 (commencing with Section 6250) of Division 7 of Title 1 of the Government Code), shall provide the public with access to all information relating to a package or packaging component that has been submitted to the department by a manufacturer or supplier of a package or packaging component pursuant to this article.

(b) (1) The department shall keep confidential any information identified by the manufacturer or supplier, pursuant to paragraph (2), as proprietary in nature, including trade secrets, as defined in Section 25173.

(2) A manufacturer or supplier providing information to the department pursuant to this article shall, at the time of submission, identify all information which the manufacturer or supplier believes is proprietary in nature. The department shall make available to the public any information not identified by the manufacturer or supplier as proprietary in nature.

SEC. 8. Section 25214.19 of the Health and Safety Code is amended to read:

25214.19. This article does not do the following:

(a) Affect a duty or other requirement imposed under federal or state law.

(b) Alter or diminish a legal obligation otherwise required in common law or by statute or regulation.

(c) Create or enlarge a defense in an action to enforce a legal obligation otherwise required in common law or by statute or regulation.

SEC. 9. Section 25214.21 is added to the Health and Safety Code, to read:

25214.21. The department may enforce the requirements of this article pursuant to its authority to enforce this chapter under all applicable provisions of law.

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 446

An act to amend Section 599 of the Food and Agricultural Code, relating to agricultural pilot projects.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 599 of the Food and Agricultural Code is amended to read:

599. New pilot demonstration projects may not be commenced on or after December 31, 2010. Until all funds available for the projects are encumbered, the University of California may continue to use available funds for projects that it commenced prior to December 31, 2010.

CHAPTER 447

An act to amend Sections 1680 and 1701.1 of, and to add Section 1670.2 to, the Business and Professions Code, relating to dentistry, and making an appropriation therefor.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 1670.2 is added to the Business and Professions Code, to read:

1670.2. (a) Except as otherwise provided in this section, any proceeding initiated by the board against a licensee for the violation of any provision of this chapter shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within seven years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first.

(b) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging fraud or willful misrepresentation is not subject to the limitation in subdivision (a).

(c) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging unprofessional conduct based on incompetence, gross negligence, or repeated negligent acts of the licensee is not subject to the limitation in subdivision (a) upon proof that the licensee intentionally concealed from discovery his or her incompetence, gross negligence, or repeated negligent acts.

(d) If an alleged act or omission involves any conduct described in subdivision (e) of Section 1680 committed on a minor, the seven-year limitations period in subdivision (a) and the 10-year limitations period in subdivision (e) shall be tolled until the minor reaches the age of majority.

(e) An accusation filed against a licensee pursuant to Section 11503 of the Government Code alleging conduct described in subdivision (e) of Section 1680 not committed on a minor shall be filed within three years after the board discovers the act or omission alleged as the ground for disciplinary action, or within 10 years after the act or omission alleged as the ground for disciplinary action occurs, whichever occurs first. This subdivision shall apply to a complaint alleging conduct received by the board on and after January 1, 2005.

(f) In any allegation, accusation, or proceeding described in this section, the limitations period in subdivision (a) shall be tolled for the period during which material evidence necessary for prosecuting or determining whether a disciplinary action would be appropriate is unavailable to the board due to an ongoing criminal investigation.

SEC. 2. Section 1680 of the Business and Professions Code is amended to read:

1680. Unprofessional conduct by a person licensed under this chapter is defined as, but is not limited to, any one of the following:

(a) The obtaining of any fee by fraud or misrepresentation.

(b) The employment directly or indirectly of any student or suspended or unlicensed dentist to practice dentistry as defined in this chapter.

(c) The aiding or abetting of any unlicensed person to practice dentistry.

(d) The aiding or abetting of a licensed person to practice dentistry unlawfully.

(e) The committing of any act or acts of sexual abuse, misconduct, or relations with a patient that are substantially related to the practice of dentistry.

(f) The use of any false, assumed, or fictitious name, either as an individual, firm, corporation, or otherwise, or any name other than the name under which he or she is licensed to practice, in advertising or in any other manner indicating that he or she is practicing or will practice dentistry, except that name as is specified in a valid permit issued pursuant to Section 1701.5.

(g) The practice of accepting or receiving any commission or the rebating in any form or manner of fees for professional services, radiograms, prescriptions, or other services or articles supplied to patients.

(h) The making use by the licensee or any agent of the licensee of any advertising statements of a character tending to deceive or mislead the public.

(i) The advertising of either professional superiority or the advertising of performance of professional services in a superior manner.

This subdivision shall not prohibit advertising permitted by subdivision (h) of Section 651.

(j) The employing or the making use of solicitors.

(k) The advertising in violation of Section 651.

(*l*) The advertising to guarantee any dental service, or to perform any dental operation painlessly. This subdivision shall not prohibit advertising permitted by Section 651.

(m) The violation of any of the provisions of law regulating the procurement, dispensing, or administration of dangerous drugs, as defined in Article 7 (commencing with Section 4211) of Chapter 9, or controlled substances, as defined in Division 10 (commencing with Section 11000) of the Health and Safety Code.

(n) The violation of any of the provisions of this division.

(o) The permitting of any person to operate dental radiographic equipment who has not met the requirements of Section 1656.

(p) The clearly excessive prescribing or administering of drugs or treatment, or the clearly excessive use of diagnostic procedures, or the clearly excessive use of diagnostic or treatment facilities, as determined by the customary practice and standards of the dental profession.

Any person who violates this subdivision is guilty of a misdemeanor and shall be punished by a fine of not less than one hundred dollars ($100) or more than six hundred dollars ($600), or by imprisonment for a term of not less than 60 days or more than 180 days, or by both a fine and imprisonment.

(q) The use of threats or harassment against any patient or licensee for providing evidence in any possible or actual disciplinary action, or other legal action; or the discharge of an employee primarily based on the employee's attempt to comply with the provisions of this chapter or to aid in the compliance.

(r) Suspension or revocation of a license issued, or discipline imposed, by another state or territory on grounds which would be the basis of discipline in this state.

(s) The alteration of a patient's record with intent to deceive.

(t) Unsanitary or unsafe office conditions, as determined by the customary practice and standards of the dental profession.

(u) The abandonment of the patient by the licensee, without written notice to the patient that treatment is to be discontinued and before the patient has ample opportunity to secure the services of another dentist and provided the health of the patient is not jeopardized.

(v) The willful misrepresentation of facts relating to a disciplinary action to the patients of a disciplined licensee.

(w) Use of fraud in the procurement of any license issued pursuant to this chapter.

(x) Any action or conduct which would have warranted the denial of the license.

(y) The aiding or abetting of a licensed dentist or dental auxiliary to practice dentistry in a negligent or incompetent manner.

(z) The failure to report to the board in writing within seven days any of the following: (1) the death of his or her patient during the performance of any dental procedure; (2) the discovery of the death of a patient whose death is related to a dental procedure performed by him or her; or (3) except for a scheduled hospitalization, the removal to a hospital or emergency center for medical treatment for a period exceeding 24 hours of any patient to whom oral conscious sedation, conscious sedation, or general anesthesia was administered, or any patient as a result of dental treatment. With the exception of patients to whom oral conscious sedation, conscious sedation, or general anesthesia was administered, removal to a hospital or emergency center that is the normal or expected treatment for the underlying dental condition is not required to be reported. Upon receipt of a report pursuant to this subdivision the board may conduct an inspection of the dental office if the board finds that it is necessary.

(aa) Participating in or operating any group advertising and referral services that are in violation of Section 650.2.

(bb) The failure to use a fail-safe machine with an appropriate exhaust system in the administration of nitrous oxide. The board shall, by regulation, define what constitutes a fail-safe machine.

(cc) Engaging in the practice of dentistry with an expired license.

(dd) 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 dentist or dental auxiliary to patient, from patient to patient, and from patient to dentist or dental auxiliary. 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 Medical Board of California, the Board of Podiatric Medicine, 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 and others regulated by the board 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.

(ee) The utilization by a licensed dentist of any person to perform the functions of a registered dental assistant, registered dental assistant in extended functions, registered dental hygienist, or registered dental hygienist in extended functions who, at the time of initial employment, does not possess a current, valid license to perform those functions.

(ff) The prescribing, dispensing, or furnishing of dangerous drugs or devices, as defined in Section 4022, in violation of Section 2242.1.

SEC. 3. Section 1701.1 of the Business and Professions Code is amended to read:

1701.1. A person who willfully, under circumstances or conditions that cause or create risk of bodily harm, serious physical or mental illness, or death, practices or attempts to practice, or advertises or holds himself or herself out as practicing dentistry without having at the time of so doing a valid, unrevoked, and unsuspended certificate as provided in this chapter, or without being authorized to perform that act pursuant to a certificate obtained in accordance with some other provision of law, is guilty of a crime, punishable by imprisonment in a county jail for up to one year, by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment. A person who conspires with or aids and abets another to commit any act described in this section is guilty of a crime and subject to the punishment described in this section. The remedy provided in this section shall not preclude any other remedy provided by law.

SEC. 4. The sum of thirty-five thousand dollars ($35,000) is hereby appropriated from the State Dentistry Fund to the Department of Consumer Affairs for the purpose of funding one Dental Board of California investigator position for the purposes of Section 1670.2 in the 2004-05 fiscal year.

CHAPTER 448

An act to amend Sections 44002, 44015, 44300, 44305, 44307, 44308, 44309, 44310, 45005, 45017, 45030, 45032, 45033, and 45041 of, and to add Sections 45002 and 45022.5 to, the Public Resources Code, relating to solid waste.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 44002 of the Public Resources Code is amended to read:

44002. (a) (1) No person shall operate a solid waste facility without a solid waste facilities permit if that facility is required to have a permit pursuant to this division.

(2) The prohibition specified in paragraph (1) includes, but is not limited to, the operation of a solid waste facility without a required solid waste facilities permit or the operation of a solid waste facility outside the permitted boundaries specified in a solid waste facilities permit.

(b) If the enforcement agency determines that a person is operating a solid waste facility in violation of subdivision (a), the enforcement agency shall immediately issue a cease and desist order pursuant to Section 45005 ordering the facility to immediately cease all activities for which a solid waste facilities permit is required and desist from those activities until the person obtains a valid solid waste facilities permit authorizing the activities or has obtained other authorization pursuant to this division.

SEC. 2. Section 44015 of the Public Resources Code is amended to read:

44015. A solid waste facilities permit issued or revised under this chapter shall be reviewed and, if necessary, revised at least once every five years.

SEC. 3. Section 44300 of the Public Resources Code is amended to read:

44300. An enforcement agency may, after holding a public hearing before a hearing panel or a hearing officer appointed pursuant to Section 44308 or 44309, in accordance with the procedures set forth in Section 44310, deny a solid waste facilities permit in any of the following cases:

(a) The application is incomplete or otherwise inadequate.

(b) The applicant has not complied with Division 13 (commencing with Section 21000).

(c) The applicant has failed to demonstrate that the facility will meet minimum regulatory standards.

(d) The application contains significant false or misleading information or significant misrepresentations.

(e) The agency determines the applicant has, during the previous three years, been convicted of, or been issued a final order for, one or more violations of this division, or regulations adopted pursuant to this division, or the terms and conditions of the permit, and the violation meets both of the following criteria:

(1) The violation demonstrates a chronic recurring pattern of noncompliance that has posed, or may pose, a significant risk to public health and safety or to the environment.

(2) The violation has not been corrected or reasonable progress toward correction has not been achieved.

SEC. 4. Section 44305 of the Public Resources Code is amended to read:

44305. (a) An enforcement agency may, after holding a public hearing before a hearing panel or a hearing officer appointed pursuant to Section 44308 or 44309, in accordance with the procedures set forth in Section 44310, temporarily suspend a solid waste facilities permit if the enforcement agency determines that changed conditions at the facility necessitate a permit revision or modification to eliminate a significant threat to public health and safety or to the environment.

(b) Notwithstanding subdivision (a), the enforcement agency may suspend a solid waste facilities permit prior to holding a hearing if the enforcement agency determines that changed conditions at the facility necessitate a permit revision or modification to prevent or mitigate an imminent and substantial threat to the public health and safety or to the environment. However, any person aggrieved by an action by an enforcement agency to suspend a permit pursuant to this subdivision may appeal the action to a hearing panel or hearing officer appointed pursuant to Section 44308 or 44309. The hearing panel or hearing officer shall, at the request of the aggrieved party, hear the appeal within three business days of the date when the permit was suspended, or the first day thereafter requested by the aggrieved party in compliance with Chapter 9 (commencing with Section 54950) of Division 2 of Title 5 of the Government Code. The hearing panel or hearing officer shall render its decision on the day the hearing concludes. The hearing panel or hearing officer may affirm, modify, or rescind the permit suspension. A decision of a hearing panel or hearing officer appointed pursuant to Section 44308 or 44309 may be appealed pursuant to Section 45030.

(c) The enforcement agency shall lift the permit suspension as soon as the changed conditions that necessitated the suspension pursuant to subdivision (b) have been corrected.

SEC. 5. Section 44307 of the Public Resources Code is amended to read:

44307. From the date of issuance of a permit that imposes conditions that are inappropriate, as contended by the applicant, or after the taking of any enforcement action pursuant to Part 5 (commencing with Section 45000) by the enforcement agency, the enforcement agency shall hold a hearing, if requested to do so, by the person subject to the action. The enforcement agency shall also hold a hearing upon a petition to the enforcement agency from any person requesting the enforcement

agency to review an alleged failure of the agency to act as required by law or regulation. A hearing shall be held in accordance with the procedures specified in Section 44310.

SEC. 6. Section 44308 of the Public Resources Code is amended to read:

44308. (a) All hearings conducted pursuant to this chapter by the enforcement agency shall be conducted by a hearing officer appointed pursuant to subdivision (d) or a hearing panel appointed pursuant to either of the following procedures:

(1) The governing body may appoint three of its members as the hearing panel.

(2) The chairperson of the governing body may appoint an independent hearing panel consisting of three members.

(b) (1) If an independent hearing panel is appointed pursuant to paragraph (2) of subdivision (a), not more than one member of the governing body shall serve on the hearing panel.

(2) Members of the independent hearing panel shall be selected for their legal, administrative, or technical abilities in areas relating to solid waste management.

(3) At least one member of the independent hearing panel shall be a technical expert with knowledge of solid waste management methods and technology.

(4) At least one member of the independent hearing panel shall be a representative of the public at large.

(5) A member of an independent hearing panel shall serve for a term of four years, and may not serve more than two consecutive terms.

(6) If a member of an independent hearing panel does not complete the member's term, the chairperson of the governing body shall appoint a replacement to serve out the remainder of the unexpired term.

(c) Members of the hearing panel may receive per diem and necessary expenses while conducting the hearing.

(d) The governing body of an enforcement agency may appoint a hearing officer only if the governing body has adopted procedures for making that appointment and has adopted qualifications that the hearing officer is required to meet.

SEC. 7. Section 44309 of the Public Resources Code is amended to read:

44309. All hearings conducted by the board acting as the enforcement agency pursuant to Section 43205 shall be conducted by a hearing panel of three board members appointed by the chairperson of the board.

SEC. 8. Section 44310 of the Public Resources Code is amended to read:

44310. All hearings conducted pursuant to this chapter shall be based on the following procedures:

(a) (1) The hearing shall be initiated by the filing of a written request for a hearing with a statement of the issues.

(A) If the hearing request is made by the person subject to the action, the request shall be made within 15 days from the date that person is notified, in writing, of the enforcement agency's intent to act in the manner specified.

(B) If the hearing request is made by a person alleging that the enforcement agency failed to act as required by law or regulation pursuant to Section 44307, the person shall file a request for a hearing within 30 days from the date the person discovered or reasonably should have discovered, the facts on which the allegation is based.

(2) The enforcement agency shall, within 15 days from the date of receipt of a request for a hearing, provide written notice to the person filing the request notifying the person of the date, time, and place of the hearing.

(3) If that person fails to request a hearing or to timely file a statement of issues, the enforcement agency may take the proposed action without a hearing or may, at its discretion, proceed with a hearing before taking the proposed action.

(4) The enforcement agency shall file its written response to the statement of issues filed by the person requesting the hearing with the hearing panel or the hearing officer, and provide a copy to the person requesting the hearing, not less than 15 days prior to the date of the hearing.

(b) The hearing shall be held no later than 30 days after receiving the request for a hearing on the merits of the issues presented, in accordance with the procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

(c) Within five days from the conclusion of the hearing, the hearing panel or hearing officer shall issue its decision. The decision shall become effective as provided in Section 45017.

SEC. 9. Section 45002 is added to the Public Resources Code, to read:

45002. An order issued pursuant to this part or Part 4 (commencing with Section 43000) shall provide the person subject to that order with a notice of that person's right to appeal pursuant to Part 4 (commencing with Section 43000) and Part 6 (commencing with Section 45030).

SEC. 10. Section 45005 of the Public Resources Code is amended to read:

45005. A person who is operating, or proposes to operate, a solid waste facility, or who is disposing of solid waste in an unauthorized

manner, or who owns a solid waste facility and causes or permits the operator to operate the facility (1) in violation of a solid waste facilities permit or in violation of this division, or any regulation adopted pursuant to this division, or (2) without a solid waste facilities permit, or (3) in a manner that causes or threatens to cause a condition of hazard, pollution, or nuisance shall, upon order of the enforcement agency, cease and desist any prohibited activities.

SEC. 11. Section 45017 of the Public Resources Code is amended to read:

45017. (a) (1) Except as provided in paragraphs (2) and (3), all orders and determinations issued pursuant to this part or Part 4 (commencing with Section 43000) shall take effect immediately upon service, except that a request for a hearing pursuant to Section 44307 shall stay the effect of any or all provisions of the order until the date of the completion of all administrative appeals.

(2) Any provision of an order issued under this part or Part 4 (commencing with Section 43000) shall take effect upon service on the affected person if the enforcement agency finds that the actions or inactions associated with that provision may pose an imminent and substantial threat to the public health and safety or to the environment, and a request for a hearing shall not stay the effect of that provision of the order pending completion of all administrative appeals.

(3) A cease and desist order issued pursuant to Section 44002 shall take effect upon service on the affected person and a request for a hearing shall not stay the effect of the order, not withstanding the completion of any administrative appeal, if the cease and desist order is issued to a person operating a solid waste facility on a property for which a solid waste facilities permit is required, and one of the following applies:

(A) The person has not applied for any solid waste facilities permit for that property before the date of the issuance of the cease and desist order.

(B) The person has been denied a solid waste facilities permit for the operation on that property for which a solid waste facilities permit is required.

(b) For purposes of this section, service may be effected by any of the following:

(1) Personal delivery.

(2) First-class United States mail, if it is made by certified mail with a return receipt requested.

(3) Express delivery by a national express mail service that provides evidence of delivery.

SEC. 12. Section 45022.5 is added to the Public Resources Code, to read:

45022.5. An enforcement agency shall maintain a record of, and take any action that the enforcement agency is authorized to take regarding, a complaint, referral, or inspection relating to the operation of a solid waste facility, solid waste disposal site, or solid waste handling activity, including, but not limited to, those activities that do not require a solid waste facilities permit, within its jurisdiction.

SEC. 13. Section 45030 of the Public Resources Code is amended to read:

45030. (a) A party to a hearing held pursuant to Chapter 4 (commencing with Section 44300) of Part 4 may appeal to the board to review the written decision of the hearing panel or hearing officer or to review the petitioner's request in the instance of a failure of a hearing panel or hearing officer to render a decision or consider the request for review, or a determination by the governing body not to direct the hearing panel or hearing officer to hold a public hearing, under the following circumstances:

(1) Within 10 days from the date of issuance of a written decision by a hearing panel or hearing officer.

(2) If no decision is issued, within 45 days from the date a request for a hearing was received by the enforcement agency for which there was a failure of a hearing panel or hearing officer to render a decision or consider a petitioner's request pursuant to Section 44310.

(b) An appellant shall commence an appeal to the board by filing a written request for a hearing together with a brief summary statement of the legal and factual basis for the appeal.

(c) Within five days from the date the board receives the request for a hearing, the board shall schedule a hearing on the appeal and notify the appellant and all other parties to the underlying proceeding of the date of the board hearing.

(d) The board shall hear the appeal within 60 days from the date the board received the request for the appeal.

(e) The board shall conduct the hearing on the appeal in accordance with the procedures specified in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of the Government Code.

SEC. 14. Section 45032 of the Public Resources Code is amended to read:

45032. (a) In the board's hearing on the appeal, the evidence before the board shall consist of the record before the hearing panel or hearing officer, relevant facts as to any actions or inactions not subject to review by a hearing panel or hearing officer, the record before the local enforcement agency, written and oral arguments submitted by the parties, and any other relevant evidence that, in the judgment of the board, should be considered to effectuate and implement the policies of this division.

(b) The board may only overturn an enforcement action, and any administrative civil penalty, by a local enforcement agency if it finds, based on substantial evidence, that the action was inconsistent with this division. If the board overturns the decision of the local enforcement agency, the hearing panel, or the hearing officer, or finds that the enforcement agency has failed to act as required, the board may do both of the following:

(1) Direct that the appropriate action be taken by the local enforcement agency.

(2) If the local enforcement agency fails to act by the date specified by the board, take the appropriate action itself.

SEC. 15. Section 45033 of the Public Resources Code is amended to read:

45033. A failure to appeal to the hearing panel, the hearing officer, or the board for review, or the refusal of the local enforcement agency, a hearing panel, the hearing officer, or the board to hear an appeal does not preclude a person from filing an action with the superior court to contest any action or inaction of the local enforcement agency or the board.

SEC. 16. Section 45041 of the Public Resources Code is amended to read:

45041. The evidence before the court shall consist of the records before the hearing panel or hearing officer and the board, if any, including the enforcement agency's records, and any other relevant evidence that, in the judgment of the court, should be considered to effectuate and implement the policies of this division.

SEC. 17. 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 449

An act to add Article 2.6 (commencing with Section 1222) to Chapter 1 of Division 2 of the Health and Safety Code, relating to health care providers.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Article 2.6 (commencing with Section 1222) is added to Chapter 1 of Division 2 of the Health and Safety Code, to read:

Article 2.6. Provider Enrollment for Clinics

1222. The department shall, on or before July 1, 2005, implement a process that allows an applicant for licensure as a primary care clinic, as defined in subdivision (a) of Section 1204, at the applicant's option, to submit an application for review of the clinic's qualifications for participation in any of the following programs simultaneous with any review for enrollment and certification as a provider in the Medi-Cal program, and if approved for participation in a program, to be enrolled or certified, or both, as a provider in the program, subsequent to certification and enrollment as a provider in the Medi-Cal program:

(a) Medi-Cal Presumptive Eligibility under Section 14148.7 of the Welfare and Institutions Code.

(b) Child Health and Disability Prevention Program provided for pursuant to Article 6 (commencing with Section 124025) of Chapter 3 of Part 2 of Division 106.

(c) Perinatal Services Program provided for pursuant to Article 4.7 (commencing with Section 14148) of Chapter 7 of Part 3 of Division 9 of the Welfare and Institutions Code.

(d) Family Planning, Access, Care, and Treatment (Family PACT) Waiver Program provided for pursuant to subdivision (aa) of Section 14132 of the Welfare and Institutions Code.

CHAPTER 450

An act to amend Sections 1206.5, 1244, and 1246.5 of, and to add Section 1214 to, the Business and Professions Code, relating to clinical laboratories.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 1206.5 of the Business and Professions Code is amended to read:

1206.5. (a) Notwithstanding subdivision (b) of Section 1206 and except as otherwise provided in Section 1241, no person shall perform

a clinical laboratory test or examination classified as waived under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A person licensed under Chapter 6.5 (commencing with Section 2840).

(8) A perfusionist if authorized by and performed in compliance with Section 2590.

(9) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(10) A medical assistant, as defined in Section 2069, if the waived test is performed pursuant to a specific authorization meeting the requirements of Section 2069.

(11) A pharmacist, as defined in Section 4036, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052, or if performing skin puncture in the course of performing routine patient assessment procedures in compliance with Section 4052.1.

(12) Other health care personnel providing direct patient care.

(13) Any other person performing nondiagnostic testing pursuant to Section 1244.

(b) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of moderate complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy

of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A person licensed under Chapter 6 (commencing with Section 2700).

(7) A perfusionist if authorized by and performed in compliance with Section 2590.

(8) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(9) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107150) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(10) Any person if performing blood gas analysis in compliance with Section 1245.

(11) (A) A person certified or licensed as an ''Emergency Medical Technician II'' or paramedic pursuant to Division 2.5 (commencing with Section 1797) of the Health and Safety Code while providing prehospital medical care, a person licensed as a psychiatric technician under Chapter 10 (commencing with Section 4500) of Division 2, as a vocational nurse pursuant to Chapter 6.5 (commencing with Section 2840), or as a midwife licensed pursuant to Article 24 (commencing with Section 2505) of Chapter 5, or certified by the department pursuant to Division 5 (commencing with Section 70001) of Title 22 of the California Code of Regulations as a nurse assistant or a home health aide, who provides direct patient care, if the person is performing the test as an adjunct to the provision of direct patient care by the person, is utilizing a point-of-care laboratory testing device at a site for which a laboratory license or registration has been issued, meets the minimum clinical laboratory education, training, and experience requirements set forth in regulations adopted by the department, and has demonstrated to the satisfaction of the laboratory director that he or she is competent in the operation of the point-of-care laboratory testing device for each analyte to be reported.

(B) Prior to being authorized by the laboratory director to perform laboratory tests or examinations, testing personnel identified in subparagraph (A) shall participate in a preceptor program until they are able to perform the clinical laboratory tests or examinations authorized in this section with results that are deemed accurate and skills that are deemed competent by the preceptor. For the purposes of this section, a ''preceptor program'' means an organized system that meets regulatory requirements in which a preceptor provides and documents personal observation and critical evaluation, including review of accuracy, reliability, and validity, of laboratory testing performed.

(12) Any other person within a physician office laboratory if the test is performed under the supervision of the patient's physician and surgeon or podiatrist who shall be accessible to the laboratory to provide onsite, telephone, or electronic consultation as needed, and shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of the clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(13) A pharmacist, if ordering drug therapy-related laboratory tests in compliance with clause (ii) of subparagraph (A) of paragraph (5) of, or subparagraph (B) of paragraph (4) of, subdivision (a) of Section 4052.

(c) Notwithstanding subdivision (b) of Section 1206, no person shall perform clinical laboratory tests or examinations classified as of high complexity under CLIA unless the clinical laboratory test or examination is performed under the overall operation and administration of the laboratory director, as described in Section 1209, including, but not limited to, documentation by the laboratory director of the adequacy of the qualifications and competency of the personnel, and the test is performed by any of the following persons:

(1) A licensed physician and surgeon holding a M.D. or D.O. degree.

(2) A licensed podiatrist or a licensed dentist if the results of the tests can be lawfully utilized within his or her practice.

(3) A person licensed under this chapter to engage in clinical laboratory practice or to direct a clinical laboratory if the test or examination is within a specialty or subspecialty authorized by the person's licensure.

(4) A person authorized to perform tests pursuant to a certificate issued under Article 5 (commencing with Section 101150) of Chapter 2 of Part 3 of Division 101 of the Health and Safety Code if the test or examination is within a specialty or subspecialty authorized by the person's certification.

(5) A licensed physician assistant if authorized by a supervising physician and surgeon in accordance with Section 3502 or Section 3535.

(6) A perfusionist if authorized by and performed in compliance with Section 2590.

(7) A respiratory care practitioner if authorized by and performed in compliance with Chapter 8.3 (commencing with Section 3700).

(8) A person performing nuclear medicine technology if authorized by and performed in compliance with Article 6 (commencing with Section 107150) of Chapter 4 of Part 1 of Division 104 of the Health and Safety Code.

(9) Any person if performing blood gas analysis in compliance with Section 1245.

(10) Any other person within a physician office laboratory if the test is performed under the onsite supervision of the patient's physician and surgeon or podiatrist who shall: (A) ensure that the person is performing test methods as required for accurate and reliable tests; and (B) have personal knowledge of the results of clinical laboratory testing or examination performed by that person before the test results are reported from the laboratory.

(d) Clinical laboratory examinations classified as provider-performed microscopy under CLIA may be personally performed using a brightfield or phase/contrast microscope by one of the following practitioners:

(1) A licensed physician and surgeon using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group medical practice of which the physician is a member or employee.

(2) A nurse midwife holding a certificate as specified by Section 2746.5, a licensed nurse practitioner as specified in Section 2835.5, or a licensed physician assistant acting under the supervision of a physician pursuant to Section 3502 using the microscope during the patient's visit on a specimen obtained from his or her own patient or from the patient of a clinic, group medical practice, or other health care provider of which the certified nurse midwife, licensed nurse practitioner, or licensed physician assistant is an employee.

(3) A licensed dentist using the microscope during the patient's visit on a specimen obtained from his or her own patient or from a patient of a group dental practice of which the dentist is a member or an employee.

SEC. 2. Section 1214 is added to the Business and Professions Code, to read:

1214. As used in this chapter, ''health fair'' means a program of health assessment procedures offered to the general public that may include screening, self-ordered, or diagnostic clinical laboratory tests or examinations performed by a clinical laboratory licensed or registered under subdivision (a) of Section 1265 that meets all the requirements of this chapter.

SEC. 3. Section 1244 of the Business and Professions Code is amended to read:

1244. (a) Nothing in this chapter shall restrict, limit, or prevent a program of nondiagnostic general health assessment provided that:

(1) The program meets the requirements of Section 1265 and complies with the requirements of CLIA for waived testing.

(2) The purpose of the program is to screen asymptomatic individuals for chronic health disorders and to refer individuals to licensed sources of care as indicated.

(3) The program does not test for human immunodeficiency virus or any reportable disease or condition identified in Section 120130 of the Health and Safety Code or the regulations adopted under that section.

(4) The program utilizes only those devices that comply with all of the following:

(A) Meet all applicable state and federal performance standards pursuant to Section 111245 of the Health and Safety Code.

(B) Are not adulterated as specified in Article 2 (commencing with Section 111250) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(C) Are not misbranded as specified in Article 3 (commencing with Section 111330) of Chapter 6 of Part 5 of Division 104 of the Health and Safety Code.

(D) Are not new devices unless they meet the requirements of Section 111550 of the Health and Safety Code.

(E) Are approved as waived tests and are used according to the manufacturer's instructions.

(5) Blood collection is performed by skin puncture only.

(6) Testing of a urine specimen is performed by the dipstick method only.

(7) Testing is performed on site and reported directly to the person requesting the test.

(8) The program maintains a supervisory committee consisting of, at a minimum, a licensed physician and surgeon and a clinical laboratory scientist licensed pursuant to this code.

(9) The supervisory committee for the program adopts written protocols that shall be followed in the program and that shall contain all of the following:

(A) Provision of written information to individuals to be assessed that shall include, but not be limited to, the following:

(i) The potential risks and benefits of assessment procedures to be performed in the program.

(ii) The limitations, including the nondiagnostic nature, of assessment examinations of biological specimens performed in the program.

(iii) Information regarding the risk factors or markers targeted by the program.

(iv) The need for followup with licensed sources of care for confirmation, diagnosis, and treatment as appropriate.

(B) Proper use of each device utilized in the program including the operation of analyzers, maintenance of equipment and supplies, and performance of quality control procedures including the determination of both accuracy and reproducibility of measurements in accordance with instructions provided by the manufacturer of the assessment device used.

(C) Proper procedures to be employed when collecting blood, if blood specimens are to be obtained.

(D) Proper procedures to be employed in handling and disposing of all biological specimens to be obtained and material contaminated by those biological specimens. These procedures shall comply with all county and city ordinances for medical waste management and blood-borne pathogen control that apply to the location where the program operates.

(E) Proper procedures to be employed in response to fainting, excessive bleeding, or other medical emergencies.

(F) Documentation that the testing personnel are following the instructions of the instrument's manufacturer, are trained in the performance of the test, and are competent to perform the testing without supervision.

(G) Reporting of assessment results to the individual being assessed.

(H) Referral and followup to licensed sources of care as indicated.

The written protocols adopted by the supervisory committee shall be maintained for at least one year following completion of the assessment program during which period they shall be subject to review by department personnel and the local health officer or his or her designee, including the public health laboratory director.

(b) If skin puncture to obtain a blood specimen is to be performed in a program of nondiagnostic general health assessment, the individual performing the skin puncture shall be authorized to perform skin puncture under this chapter.

(c) A program of nondiagnostic general health assessment that fails to meet the requirements set forth in subdivisions (a) and (b) shall not operate.

(d) For purposes of this section, ''skin puncture'' means the collection of a blood specimen by the finger prick method only and does not include venipuncture, arterial puncture, or any other procedure for obtaining a blood specimen.

(e) Nothing in this chapter shall be interpreted as prohibiting a licensed clinical laboratory from operating a program of nondiagnostic

general health assessment provided that the clinical laboratory complies with the requirements of this section.

(f) A program for a health fair providing diagnostic or screening tests is not a nondiagnostic general health assessment program if all of the requirements of this chapter are met, and the laboratory performing the testing is licensed or registered under subdivision (a) of Section 1265. For a test that is not authorized for self-ordering pursuant to Section 1246.5 and that is not for a nondiagnostic general health assessment pursuant to this section, the licensed or registered clinical laboratory participating in the health fair shall assure that the test is ordered on-site only by a person licensed under this division who is authorized under his or her scope of practice to order the test or by a person authorized by that licensee. The results of a test performed at a health fair shall be provided to the test subject along with an explanation of the results.

SEC. 4. Section 1246.5 of the Business and Professions Code is amended to read:

1246.5. Notwithstanding any other provision of law, any person may request, and any licensed clinical laboratory or public health laboratory may perform, the laboratory tests specified in this section. A registered clinical laboratory may perform the laboratory tests specified in this section if the test is subject to a certificate of waiver under CLIA and the laboratory has registered with the department under paragraph (2) of subdivision (a) of Section 1265. A program for nondiagnostic general health assessment that includes a laboratory test specified in this section shall comply with the provisions of Section 1244. The results from any test may be provided directly to the person requesting the test if the test is on or for his or her own body. These test results shall be provided in a manner that presents clear information and that identifies results indicating the need for referral to a physician and surgeon.

The tests that may be conducted pursuant to this section are: pregnancy, glucose level, cholesterol, occult blood, and any other test for which there is a test for a particular analyte approved by the federal Food and Drug Administration for sale to the public without a prescription in the form of an over-the-counter test kit. A test approved only as an over-the-counter collection device may not be conducted pursuant to this section.

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 451

An act to add Section 1812.117 to the Civil Code, relating to discount buying organizations.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 1812.117 is added to the Civil Code, to read:

1812.117. (a) An affiliate discount buying organization may, at its option, and with the express written consent of its parent, comply with the trust account withdrawal provisions set forth in subdivision (b), in lieu of those contained in subdivision (b) of Section 1812.116.

(b) The affiliate shall comply with the trust account provisions of subdivision (b) of Section 1812.116, except that:

(1) As to each buyer, during the first one-fourth or first six months of the buyer's membership period, whichever is shorter, funds representing no more than one-half of the contract price may be withdrawn from the trust account.

(2) During the subsequent one-fourth or six-month period of the buyer's membership period, whichever is shorter, the remaining balance of the contract price may be withdrawn from the trust account.

(c) To qualify for the provisions set forth in subdivision (b), (1) the affiliate shall maintain a surety bond of two hundred fifty thousand dollars ($250,000), and (2) the parent shall maintain an aggregate surety bond of two million five hundred thousand dollars ($2,500,000) and a letter of credit, as set forth in subdivision (d), for all of its affiliates that qualify for the withdrawal provisions of subdivision (b). The bonds shall be issued by a surety company admitted to do business in this state. A copy of each bond shall be filed with the Secretary of State, with a copy provided to the Attorney General. The affiliate's bond shall be in lieu of the bond required by subdivision (a) of Section 1812.103. The surety bonds shall comply with the requirements of this section and shall be in favor of the State of California for the benefit of consumers harmed by any violation of this title by the affiliate, the failure of the affiliate to comply with the terms of its membership contracts with consumers, and the failure of the affiliate to comply with the terms of any agreement with consumers for the purchase of goods or services, provided the bonds

shall cover only pecuniary loss and not exemplary damages or treble damages permitted under subdivision (a) of Section 1812.123, and provided further the parent's bond shall not be drawn on until the affiliate's bond is exhausted.

(d) The parent shall continuously maintain and provide to the Attorney General as beneficiary an irrevocable letter of credit issued by a California state chartered bank or a national bank with its principal place of business in the State of California, in the amount of one million dollars ($1,000,000), in a form satisfactory to the Attorney General. After the bonds described in subdivision (c) have been exhausted, only the Attorney General, by and through the Attorney General's deputy or assistant, may draw on the letter of credit for the satisfaction of any final judgments based on any violation of this title by the affiliate, the failure of the affiliate to comply with the terms of its membership contracts with consumers, or the failure of an affiliate to comply with the terms of any agreement with consumers for the purchase of goods or services, provided the liability is established by final judgment of a court of competent jurisdiction and the time for appeal has expired or, if an appeal is taken, the appeal is finally determined and the judgment is affirmed, and provided further the letter of credit shall cover only pecuniary loss and not exemplary damages or treble damages permitted under subdivision (a) of Section 1812.123. The letter of credit shall provide that payment shall be made to the Attorney General upon presentation to the issuer of a sight draft stating only the amount drawn and signed by the Attorney General or by an Assistant or Deputy Attorney General. Any amount received by the Attorney General under the letter of credit shall be used exclusively to satisfy final judgments as described in this subdivision. The Attorney General may apply to the court for orders as desired or needed to carry out the provisions of this subdivision.

(e) In addition to other lawful means for the enforcement of the surety's liability on the bonds required by this section, the surety's liability may be enforced by motion after a final judgment has been obtained against an affiliate based on any violation of this title by the affiliate, the failure of the affiliate to comply with the terms of its membership contracts with consumers, or the failure of the affiliate to comply with the terms of any agreement with consumers for the purchase of goods or services. The bond of the parent shall not be drawn on until the bond of the affiliate has been exhausted, as provided in subdivisions (c) and (d). The motion may be filed by the Attorney General, a public prosecutor, or any person who obtained the judgment without first attempting to enforce the judgment against any party liable under the judgment. The notice of motion, motion, and a copy of the judgment shall be served on the surety as provided in Chapter 5 (commencing with Section 1010) of Title 14 of Part 2 of the Code of

Civil Procedure. The notice shall set forth the amount of the claim, a brief statement indicating that the claim is covered by the bond, and, if the motion is to enforce liability under the bond provided by the parent, a statement that the bond provided by the affiliate has been exhausted or will be exhausted if the motion is granted. Service shall also be made on the Attorney General directed to the Consumer Law section. The court shall grant the motion unless the surety establishes that the claim is not covered by the bond or unless the court sustains an objection made by the Attorney General that the grant of the motion might impair the rights of actual or potential claimants or is not in the public interest. The court may, in the interest of justice, order a pro rata or other equitable distribution of the bond proceeds.

(f) (1) The bond required by subdivision (c) for an affiliate shall be continuously maintained by the affiliate until the date the affiliate ceases to make the election under subdivision (a) or ceases to engage in the business of a discount buying organization. The bond required by subdivision (c) for the parent shall be continuously maintained by the parent until the date all affiliates cease to make the election under subdivision (a) or all affiliates cease to engage in the business of a discount buying organization.

(2) Notwithstanding the expiration or termination of any bond required under this section, the bond remains in full force and effect for all liabilities incurred before, and for acts, omissions, and causes existing or which arose before, the expiration or termination of the bond. Legal proceedings may be had therefor in all respects as though the bond were in effect.

(3) The letter of credit required under subdivisions (c) and (d) shall be continuously maintained for a period of four years after all affiliates cease to make the election under subdivision (a) or cease to engage in the business of a discount buying organization, provided the period shall be extended until there is a final judgment, as described in subdivision (d), entered in each action seeking relief that may be covered by the letter of credit if the action was filed before the expiration of the four-year period.

(g) Subdivision (a) of Section 1812.121 does not apply to a discount buying organization that offers substantially equivalent alternative at-home ordering service through other generally available channels of communications, such as the Internet, for the same categories of goods and services, provided the ordered goods are shipped either to the home or to a freight receiver within 20 miles of the buyer's residence at the time the buyer entered into the contract for discount buying services.

(h) For purposes of this section, the following terms apply:

(1) ''Affiliate'' or ''affiliate discount buying organization'' means a discount buying organization that is a subsidiary of a parent, as defined

in paragraph (4), or operates under a franchise, as defined in paragraph (3), granted by a parent.

(2) ''Consumer'' or ''buyer'' means and includes a client or member of an affiliate discount buying organization.

(3) ''Franchise'' has the same meaning as in Section 31005 of the Corporations Code.

(4) ''Parent'' means a business entity that directly or indirectly has franchised or operated 25 or more discount buying organizations for 10 years or more.

CHAPTER 452

An act to amend Section 3502.1 of the Business and Professions Code, relating to healing arts.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 3502.1 of the Business and Professions Code is amended to read:

3502.1. (a) In addition to the services authorized in the regulations adopted by the board, and except as prohibited by Section 3502, while under the supervision of a licensed physician and surgeon or physicians and surgeons authorized by law to supervise a physician assistant, a physician assistant may administer or provide medication to a patient, or transmit orally, or in writing on a patient's record or in a drug order, an order to a person who may lawfully furnish the medication or medical device pursuant to subdivisions (c) and (d).

(1) A supervising physician and surgeon who delegates authority to issue a drug order to a physician assistant may limit this authority by specifying the manner in which the physician assistant may issue delegated prescriptions.

(2) Each supervising physician and surgeon who delegates the authority to issue a drug order to a physician assistant shall first prepare and adopt, or adopt, a written, practice specific, formulary and protocols that specify all criteria for the use of a particular drug or device, and any contraindications for the selection. The drugs listed shall constitute the formulary and shall include only drugs that are appropriate for use in the type of practice engaged in by the supervising physician and surgeon. When issuing a drug order, the physician assistant is acting on behalf of and as an agent for a supervising physician and surgeon.

(b) ''Drug order'' for purposes of this section means an order for medication which is dispensed to or for a patient, issued and signed by a physician assistant acting as an individual practitioner within the meaning of Section 1306.02 of Title 21 of the Code of Federal Regulations. Notwithstanding any other provision of law, (1) a drug order issued pursuant to this section shall be treated in the same manner as a prescription or order of the supervising physician, (2) all references to ''prescription'' in this code and the Health and Safety Code shall include drug orders issued by physician assistants pursuant to authority granted by their supervising physicians, and (3) the signature of a physician assistant on a drug order shall be deemed to be the signature of a prescriber for purposes of this code and the Health and Safety Code.

(c) A drug order for any patient cared for by the physician assistant that is issued by the physician assistant shall either be based on the protocols described in subdivision (a) or shall be approved by the supervising physician before it is filled or carried out.

(1) A physician assistant shall not administer or provide a drug or issue a drug order for a drug other than for a drug listed in the formulary without advance approval from a supervising physician and surgeon for the particular patient. At the direction and under the supervision of a physician and surgeon, a physician assistant may hand to a patient of the supervising physician and surgeon a properly labeled prescription drug prepackaged by a physician and surgeon, manufacturer as defined in the Pharmacy Law, or a pharmacist.

(2) A physician assistant may not administer, provide or issue a drug order for Schedule II through Schedule V controlled substances without advance approval by a supervising physician and surgeon for the particular patient.

(3) Any drug order issued by a physician assistant shall be subject to a reasonable quantitative limitation consistent with customary medical practice in the supervising physician and surgeon's practice.

(d) A written drug order issued pursuant to subdivision (a), except a written drug order in a patient's medical record in a health facility or medical practice, shall contain the printed name, address, and phone number of the supervising physician and surgeon, the printed or stamped name and license number of the physician assistant, and the signature of the physician assistant. Further, a written drug order for a controlled substance, except a written drug order in a patient's medical record in a health facility or a medical practice, shall include the federal controlled substances registration number of the physician assistant. The requirements of this subdivision may be met through stamping or otherwise imprinting on the supervising physician and surgeon's prescription blank to show the name, license number, and if applicable, the federal controlled substances number of the physician assistant, and

shall be signed by the physician assistant. When using a drug order, the physician assistant is acting on behalf of and as the agent of a supervising physician and surgeon.

(e) The medical record of any patient cared for by a physician assistant for whom the supervising physician and surgeon's Schedule II drug order has been issued or carried out shall be reviewed and countersigned and dated by a supervising physician and surgeon within seven days.

(f) All physician assistants who are authorized by their supervising physicians to issue drug orders for controlled substances shall register with the United States Drug Enforcement Administration (DEA).

(g) The committee shall consult with the Medical Board of California and report during its sunset review required by Division 1.2 (commencing with Section 473) the impacts of exempting Schedule III and Schedule IV drug orders from the requirement for a physician and surgeon to review and countersign the affected medical record of a patient.

CHAPTER 453

An act to add Section 129875.1 to the Health and Safety Code, relating to health facilities.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

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

(a) The physical infrastructure and related systems of single-story, wood-frame, and light steel frame construction for skilled nursing and intermediate care facilities and hospitals are governed by the Office of Statewide Health Planning and Development (OSHPD).

(b) Under condition of new construction or alteration of an existing structure, these facilities must conform to the latest edition of the California Building Standards Code, and are required to go through a building application and plan check process under the jurisdiction of OSHPD.

(c) The Legislature intends that these types of buildings conform to the latest California Building Standards Code when they are newly constructed, or when alterations are undertaken voluntarily, in order to expand or to upgrade the facility.

(d) The Legislature intends for these types of buildings to conform to the latest California Building Standards Code when alterations must be undertaken to repair existing systems or to keep up the course of normal or routine maintenance.

(e) The Legislature intends that implementation of the act adding this section not conflict or interfere with the implementation of any provision of the Labor Code.

(f) The Legislature intends that the exemption authority provided under the act adding this section shall extend only to alterations that are designed to restore health facilities to normal operational status, that are necessary to repair systems or equipment, or that are undertaken for routine maintenance purposes.

SEC. 2. Section 129875.1 is added to the Health and Safety Code, to read:

129875.1. (a) Notwithstanding Section 129875, projects for the construction or alterations of buildings specified in paragraph (1) of subdivision (a) of Section 129725 that are single-story, wood-frame or light steel frame construction and buildings specified in paragraphs (2) and (3) of subdivision (b) of Section 129725 shall be exempt from plan review and inspection by the office prior to construction if the facility demonstrates to the office, by written description of the project, that all of the following conditions are met:

(1) The construction or alteration is undertaken to repair existing systems or to keep up the course of normal or routine maintenance.

(2) The construction or alteration either restores the facility to the same operational status, or improves operational status from its operating condition immediately prior to the event, occurrence, or condition that necessitated the alteration.

(3) The scope of the construction or alteration is not ordinarily within the standard of practice of a licensed architect or registered engineer.

(4) The construction or alteration does not degrade the status or condition of the fire and life safety system from the status of the system immediately prior to the event, occurrence, or condition that necessitated the alteration.

(b) Upon completion of construction or alteration of any building subject to this section, and prior to use of the repaired system or other subject of the construction or alteration, the office shall inspect and approve the work. The office may require an interim inspection for code compliance when walls, ceilings, or other materials or finishes will cover the final work.

(c) Upon compliance with subdivision (a), the office shall issue a building permit.

CHAPTER 454

An act to amend Sections 14087.96, 14087.961, 14087.9625, 14087.966, and 14087.969 of the Welfare and Institutions Code, relating to Medi-Cal.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 14087.96 of the Welfare and Institutions Code is amended to read:

14087.96. The following definitions shall apply for purposes of this article:

(a) ''County'' means the County of Los Angeles.

(b) ''Board of supervisors'' means the Board of Supervisors of the County of Los Angeles.

(c) ''Commission'' means the separate public agency established by the board of supervisors to operate a local initiative for health care in the county.

(d) ''Local initiative'' means the health plan or plans and other health care programs owned or operated by the commission established under this article, and operated pursuant to the strategic plan.

(e) ''Medi-Cal managed care programs'' means all those components of the Medi-Cal program that involve the restriction of access for Medi-Cal patients to particular providers or health plans and that involve managed care principles, including, but not limited to, programs such as those described in Article 2.7 (commencing with Section 14087.3), Article 2.8 (commencing with Section 14087.5), Chapter 8 (commencing with Section 14200), including pilot programs under Article 7 (commencing with Section 14490) thereof.

(f) ''Health care consumer'' means a Medi-Cal beneficiary or any other person eligible to receive health care services under the local initiative, including parents, legal guardians, or conservators of Medi-Cal beneficiaries and people who will receive health care services under the local initiative.

(g) ''Health care consumer advocate'' means an individual who, whether in a paid or unpaid capacity, represents the interests of Medi-Cal beneficiaries or people who will receive health care under the local initiative.

(h) ''Strategic plan'' means the report issued on March 31, 1993, by the State Department of Health Services, entitled ''The State Department of Health Services' Plan for Expanding Medi-Cal Managed

Care: Protecting Vulnerable Populations'' or the report, as subsequently revised or amended.

SEC. 2. Section 14087.961 of the Welfare and Institutions Code is amended to read:

14087.961. Governance of the commission shall be vested in a governing body consisting of 13 members, each of whom shall have a fiduciary duty to act in the best interest of the commission and the local initiative, nominated by the following entities, and appointed by the board of supervisors:

(a) Four members shall be nominated by the board of supervisors to represent the County of Los Angeles. No more than one member nominated by the board of supervisors shall be a member of the board of supervisors and each remaining member nominated by the board of supervisors shall possess experience as a health care administrator or as a health care provider.

(b) One member shall be a representative of private hospitals that have Medi-Cal disproportionate share status, or if that status no longer exists, that serve an equivalent patient population, who shall be nominated by the Hospital Association of Southern California.

(c) One member shall be a representative of private hospitals that do not have Medi-Cal disproportionate share status, who shall be nominated by the Hospital Association of Southern California.

(d) One member shall be a representative of free and community clinics, who shall be nominated by the Community Clinics Association of Los Angeles County.

(e) One member shall be a representative of federally qualified health centers, who shall be nominated by the Community Clinics Association of Los Angeles County, or if that status no longer exists, an equivalent group of health centers.

(f) One member shall be a physician representative, who shall be nominated by the Los Angeles County Medical Association, in consultation with other physician associations within the county.

(g) One member shall be a representative of Knox–Keene licensed prepaid health plans, who shall be nominated by the California Association of Health Plans.

(h) One member shall represent health care consumers, and at the time of being nominated, shall be a health care consumer. The initial nominee shall be nominated by the working group on the role of the consumer for the first nominee, and thereafter, by a process determined by the community advisory committee under which only health care consumers may nominate and vote for appointees.

(i) One member shall be a health care consumer advocate, who shall represent health care consumers. The initial nominee shall be nominated by the working group on the role of the consumer for the first nominee,

and thereafter, by a process determined by the community advisory committee under which only health care consumers may nominate and vote for appointees.

(j) One member shall be a children's health care provider representative, who shall be nominated by the Children's Planning Council as the coordinating entity for organizations and agencies providing direct services to, or advocacy for, children and families within the county.

SEC. 3. Section 14087.9625 of the Welfare and Institutions Code is amended to read:

14087.9625. (a) Members of the governing body of the commission shall serve four-year terms.

(b) Individuals shall be limited to serving on the governing body for two consecutive four-year terms or a maximum of 10 years.

SEC. 4. Section 14087.966 of the Welfare and Institutions Code is amended to read:

14087.966. (a) The governing body for each geographic region served by the local initiative shall establish a regional community advisory committee to ensure community involvement.

(b) Each regional community advisory committee shall have no more than 35 members, a majority of whom shall be consumers and consumer advocates, but may also include providers.

(c) (1) The chairpersons of the regional community advisory committees shall comprise an executive community advisory committee.

(2) It is the intent of the Legislature that a majority of the executive community advisory committee shall be consumers and consumer advocates, plus two at-large members.

(d) The executive community advisory committee shall make recommendations, and shall report on its activities, to the governing body and shall be able to place matters of the governing body's agenda for consideration.

SEC. 5. Section 14087.969 of the Welfare and Institutions Code is amended to read:

14087.969. (a) Notwithstanding any other provision of law, neither a member of the governing body of the commission nor a member of any advisory panel to the governing body shall be deemed to be interested in a contract or amendment to a contract entered into by the commission within the meaning of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code if all of the following conditions are satisfied:

(1) The board of supervisors or the governing body appointed the member to represent the interests of the county, physicians, health care practitioners, hospitals, pharmacies, other health care organizations,

consumers, or consumer advocates. For purposes of this section, each group whose interests are described in this paragraph shall be referred to as a stakeholder.

(2) The contract or the contract as amended authorizes individuals or organizations in the same stakeholder group that the member was appointed to represent to provide services under the local initiative.

(3) The contract or the contract as amended contains substantially the same terms and conditions as contracts entered into with other individuals or organizations in the same stakeholder group that the member was appointed to represent.

(4) The contract or the contract as amended does not specifically authorize the member or the member's organization, as defined in paragraph (1) of subdivision (e), to provide services under the local initiative.

(b) If paragraphs (1) to (3), inclusive, of subdivision (a) are satisfied but the contract or the contract as amended would specifically authorize the member or the member's organization to provide services under the local initiative, the contract approved by the governing body of the commission shall be deemed to comply with Section 1090 of the Government Code if the member abstains from voting on the contract or amendment to the contract, the member discloses the interest to the governing body or the advisory panel, whichever is applicable, the governing body or advisory panel notes the disclosure and the abstention in its official records, the member does not influence or attempt to influence the governing body, the advisory panel, or any member of the governing body or advisory panel to enter into the particular contract or the contract as amended, and the governing body or advisory panel authorizes the contract or amendment to the contract in good faith only by a vote of its membership sufficient for the purpose without counting the vote of the member.

(c) Notwithstanding any other provision of law, income from a contractor under the local initiative to a member or to a member's organization, as defined in paragraph (1) of subdivision (e), which is unrelated income, as defined in paragraph (2) of subdivision (e), shall not cause the member of the governing body of the commission or the member of the advisory panel to the governing body to be deemed to be interested in the contract or amendment to the contract for purposes of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code, if the contract or the contract as amended contains substantially the same terms and conditions as contracts entered into with other contractors in the same stakeholder group that is the source of the unrelated income.

(d) If the particular contract or the contract as amended does not contain substantially the same terms and conditions as contracts entered

into with other contractors in the same stakeholder group that is the source of the unrelated income, the contract approved by the governing body of the commission shall be deemed to comply with Section 1090 of the Government Code if the member abstains from voting on the contract or amendment to the contract, the member discloses the interest to the governing body or the advisory panel, whichever is applicable, the governing body or advisory panel notes the disclosure and abstention in its official records, the member does not influence or attempt to influence the governing body to enter into the particular contract or the contract as amended, and the governing body or advisory panel authorizes the contract or amendment to the contract in good faith only by a vote of its membership sufficient for that purpose without counting the vote of the member.

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

(1) ''Member's organization'' means an entity for which the member serves as an employee, officer, board member, or consultant, or in which the member has any other financial interest for purposes of Article 4 (commencing with Section 1090) of Chapter 1 of Division 4 of Title 1 of the Government Code.

(2) ''Unrelated income'' means income that is not related to, or is not for providing services under, the local initiative.

CHAPTER 455

An act to add Section 9253.5 to the Welfare and Institutions Code, relating to long-term care.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 9253.5 is added to the Welfare and Institutions Code, to read:

9253.5. (a) The Legislature finds and declares all of the following:

(1) Providers of long-term care programs, including, but not limited to, programs of all-inclusive care for the elderly, skilled nursing facilities, adult day care, adult day services, Alzheimer's day care centers, and multipurpose senior services programs, are regulated by numerous state and local agencies.

(2) Overlapping and duplicative oversight of long-term care programs often results in conflicting interpretations of statutes and

regulations. Also, oversight by multiple agencies creates an operational burden that ultimately deprives residents or clients of valuable staff time.

(3) The State Auditor has completed an audit investigation of the duplicative overlapping regulatory oversight of long-term care programs.

(b) By March 1, 2005, the California Health and Human Services Agency shall determine the appropriate single entity to provide oversight of the waiver standards for adult day health care centers.

(c) The State Department of Health Services shall determine a percentage of the number of oversight reviews it conducts of the Multipurpose Senior Services Program (MSSP) utilization surveys that are conducted by the California Department of Aging. The percentage of surveys reviewed shall be sufficient to ensure effective oversight, but small enough to avoid unnecessary duplication of effort.

CHAPTER 456

An act to add Section 95029.5 to the Government Code, relating to early intervention services.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 95029.5 is added to the Government Code, to read:

95029.5. (a) The State Department of Education shall conduct a study of the current methods of providing special instruction and other services to infants and toddlers who are deaf or hard of hearing. The study shall be funded, upon appropriation by the Legislature, by any available federal funds administered by the State Department of Education and shall include, but not be limited to, all of the following:

(1) The personnel utilized.

(2) The varying approaches utilized in providing services to individuals with single disabilities, as compared to the approaches used in providing services to individuals with multiple disabilities, including hearing impairments.

(3) The adequacy of the resources and personnel standards.

(4) The costs associated with ensuring that infants and toddlers who are deaf or hard of hearing received special instruction from credentialed teachers of the deaf.

(b) The department shall report to the Legislature by January 1, 2006, recommendations regarding how to best provide and fund appropriate quality services for these children.

CHAPTER 457

An act to amend Sections 35171, 35221, and 35231 of the Food and Agricultural Code, relating to milk products.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 35171 of the Food and Agricultural Code is amended to read:

35171. Every license that is issued pursuant to Article 7 (commencing with Section 35131) and this article expires two years from the date of issue. License renewal fees must be received within 90 days of the license expiration date for renewals to be issued. Each licensee required to be licensed pursuant to Section 35163 must, within six months prior to the expiration of the license, successfully complete a refresher course and proficiency evaluation acceptable to the secretary. Licenses may then be renewed for two-year periods upon payment of the fee which is prescribed by Section 35231.

SEC. 2. Section 35221 of the Food and Agricultural Code is amended to read:

35221. (a) Every person that is engaged in the business of dealing in, receiving, manufacturing, freezing, or processing ice cream, ice milk, sherbet, or any similar frozen product, of manufacturing, freezing, or processing imitation ice cream, imitation ice milk, or any similar frozen product, or of processing any other dairy product for which a license is required, shall pay the following fees:

(1) For a license for all frozen milk products and all imitation frozen milk products, one hundred dollars ($100) for the calendar year for which the license is issued. The fee for the renewal of this license is one hundred dollars ($100), plus one dollar ($1) for each additional 10,000 gallons or fraction of 10,000 gallons over and above 20,000 gallons that were manufactured during the preceding year, ending December 31.

(2) For a semifrozen (soft-serve) milk products plant license issued to persons making application under Section 33704, one hundred fifty dollars ($150) for the calendar year for which the semifrozen (soft-serve)

milk products plant license is issued. The fee for the renewal of this license is one hundred fifty dollars ($150).

(3) For a limited packaging permit issued to a licensed semifrozen (soft-serve) milk products plant making application under subdivision (b) of Section 33704, three hundred dollars ($300) for issuance of the initial permit. The fee for the annual renewal of this permit is one hundred fifty dollars ($150).

(4) For a limited manufacturing permit issued to a hotel, restaurant, or boardinghouse pursuant to Section 35016, one hundred dollars ($100) for the initial permit. The fee for the annual renewal of this permit shall be one hundred dollars ($100).

(5) For a person, except a hospital or sanitarium, that is engaged in the business of manufacturing any diabetic or dietetic frozen milk product or mix, one hundred dollars ($100) for the calendar year for which a diabetic or dietetic frozen milk products license is issued. The fee for the renewal of this license is one hundred dollars ($100).

(6) For any other product for which a license is required, one hundred dollars ($100) for the calendar year for which the license is issued. The fee for the renewal of this license is one hundred dollars ($100), plus one dollar ($1) for each additional 10,000 pounds or fraction of 10,000 pounds over and above the first 100,000 pounds, of milk fat that was purchased or received during the preceding year, ending December 31.

(b) The license and permit fees required by this section shall be prorated on a quarterly basis for any licensee or permittee that commences operations after the first quarter in any calendar year, regardless of whether or not the milk products plant was licensed or permitted during the preceding calendar year.

SEC. 3. Section 35231 of the Food and Agricultural Code is amended to read:

35231. The initial and renewal fees for a tester's, sampler's and weigher's, technician's, pasteurizer's, and butter grader's license are as follows:

(a) For a tester's license, including a nonfat milk solids tester, seventy-five dollars ($75).

(b) For a sampler's and weigher's license, seventy-five dollars ($75).

(c) For a limited sampler's and weigher's license, fifty dollars ($50).

(d) For a technician's license, one hundred dollars ($100).

(e) For a pasteurizer's license, seventy-five dollars ($75).

(f) For a butter grader's license, seventy-five dollars ($75).

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CHAPTER 458

An act to amend Sections 31001, 31119, 31125, 31300, 31402, 31403, 31405, 31410, and 31411 of, and to add Sections 31001.1, 31109, 31109.1, 31406, 31407, and 31408 to, the Corporations Code, and to add Section 22063 to the Financial Code, relating to franchises, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 31001 of the Corporations Code is amended to read:

31001. The Legislature hereby finds and declares that the widespread sale of franchises is a relatively new form of business which has created numerous problems both from an investment and a business point of view in the State of California. Prior to the enactment of this division, the sale of franchises was regulated only to the limited extent to which the Corporate Securities Law of 1968 applied to those transactions. California franchisees have suffered substantial losses where the franchisor or his or her representative has not provided full and complete information regarding the franchisor-franchisee relationship, the details of the contract between franchisor and franchisee, and the prior business experience of the franchisor.

It is the intent of this law to provide each prospective franchisee with the information necessary to make an intelligent decision regarding franchises being offered. Further, it is the intent of this law to prohibit the sale of franchises where the sale would lead to fraud or a likelihood that the franchisor's promises would not be fulfilled, and to protect the franchisor and franchisee by providing a better understanding of the relationship between the franchisor and franchisee with regard to their business relationship.

SEC. 2. Section 31001.1 is added to the Corporations Code, to read:

31001.1. (a) To enhance the uniform and efficient administration, and the effective enforcement, of this division, it is the intent of the Legislature that the commissioner shall maintain a risk-based process of reviewing franchise applications as described in this section.

(b) Under the risk-based review process, the commissioner shall focus on reviewing application information posing the most risk to prospective franchisees in accordance with Section 31115, with emphasis on risks associated with the franchisor's financial condition, the franchisor's compliance record, and significant deficiencies with the franchisor's application.

(c) When reviewing franchise filings under this section, the commissioner shall concentrate on helping to prevent misappropriation, mismanagement, and misrepresentation in connection with the offer or sale of any franchise subject to this division.

(d) The commissioner shall consider guidelines, or other information developed by the North American Securities Administrators Association that are in effect, to assist in the implementation of the risk-based review process. The risk-based review procedures implemented by the commissioner shall be considered internal management criteria and guidelines within the meaning of subdivisions (d) and (e) of Section 11340.9 of the Government Code.

SEC. 3. Section 31109 is added to the Corporations Code, to read:

31109. Any offer or sale of a franchise that meets all of the following requirements shall be exempt from Chapter 2 (commencing with Section 31110):

(a) Each and every purchaser of the franchise is one of the following:

(1) Any partner, executive officer, or director of the franchisor, or any executive officer of its corporate general partner if the franchisor is a partnership, or any manager if the franchisor is a limited liability company.

(2) Any entity with total assets exceeding five million dollars ($5,000,000) according to its most recent financial statements and not specifically formed for the purpose of acquiring the franchise offered. For purposes of this section, ''entity'' shall mean an organization described in Section 501(c)(3) of the Internal Revenue Code, a corporation, Massachusetts or similar business trust, limited liability company, or partnership. The financial statements referred to in this paragraph shall meet both of the following requirements:

(A) Be as of date not more than 90 days prior to the earlier of either the date on which the first prospective purchaser signs any binding franchise or other agreement with the franchisor in connection with the award of the franchise, or the date on which the franchisor receives any consideration from the first prospective purchaser in connection with the award of the franchise.

(B) Be prepared in accordance with either of the following:

(i) Generally accepted accounting principles and, if the entity has consolidated subsidiaries, on a consolidated basis.

(ii) The rules and requirements of the Securities and Exchange Commission, whether or not required by law to be prepared in accordance with those rules and requirements.

(3) Any natural person whose net worth, or joint net worth with that person's spouse, exceeds one million dollars ($1,000,000) at the time of his or her purchase of the franchise, excluding the value of that person's

personal residence, any and all retirement or pension plan accounts or benefits, home furnishings, and automobiles.

(4) Any natural person whose gross income exceeds three hundred thousand dollars ($300,000) per year in each of the two most recent years, or whose joint gross income with that person's spouse exceeds five hundred thousand dollars ($500,000) per year in each of those years, and who reasonably expects to reach the same income level in the current year.

(5) Any entity, in which all of the equity owners are persons or entities described in either paragraph (1), (2), (3), or (4).

(b) Each and every purchaser of the franchise has knowledge and experience in financial and business matters, either alone or with professional advisers of the purchaser who are unaffiliated with, and not directly or indirectly compensated by, the franchisor or an affiliate or selling agent of the franchisor, such that the franchisor reasonably believes, based on reasonable inquiry before the sale, that each and every purchaser has the capacity to evaluate the merits and risks of, and protect their own interests in, the franchise investment.

(c) Each and every purchaser of the franchise purchases the franchise for the purchaser's own account, or a trust account if the purchaser is a trustee, for the purpose of conducting the business as a franchise and not with a view to, or for a sale in connection with, any resale or distribution of the franchise or any interest in the franchise.

(d) The immediate cash payment required from a purchaser of the franchise who is a natural person, upon the purchase of the franchise, shall not exceed 10 percent of that person's net worth or joint net worth with that person's spouse, exclusive of that person's personal residence, any and all retirement or pension accounts or benefits, home furnishings and automobiles.

(e) The franchisor files with the commissioner a notice of exemption and pays the fee prescribed in subdivision (f) of Section 31500 prior to any offer or sale of a franchise in this state for which the exemption is claimed during any calendar year in which one or more franchises are sold, excluding any material modification.

(f) No franchisor or any of its officers, directors, employees, or agents shall form, organize, engage, or assist any person to purchase a franchise for resale or distribution to avoid the registration requirements of Chapter 2 (commencing with Section 31110).

SEC. 4. Section 31109.1 is added to the Corporations Code, to read:

31109.1. (a) There shall be exempted from the provisions of Chapter 2 (commencing with Section 31110) the offer and sale of a franchise registered under Section 31111, 31121, or 31123 on terms different from the terms of the offer registered thereunder if all of the following requirements are met:

(1) The initial offer is the offer registered under Section 31111, 31121, or 31123.

(2) The prospective franchisee receives all of the following in a separate written appendix to the offering circular:

(A) A summary description of each material negotiated term that was negotiated by the franchisor for a California franchise during the 12 month period ending in the calendar month immediately preceding the month in which the negotiated offer or sale is made under this section.

(B) A statement indicating that copies of the negotiated terms are available upon written request.

(C) The name, telephone number, and address of the representative of the franchisor to whom requests for a copy of the negotiated terms may be obtained.

(3) The franchisor certifies or declares in an appendix to its application for renewal that it has complied with all of the requirements of this section, in the event this exemption is claimed.

(4) The negotiated terms, on the whole, confer additional benefits on the franchisee.

(b) The franchisor shall provide a copy of the negotiated terms described in subdivision (a) to the prospective franchisee within five business days following the request of the franchisee.

(c) The franchisor shall maintain copies of all material negotiated terms for which this exemption is claimed for a period of five years from the effective date of the first agreement containing the relevant negotiated term. Upon the request of the commissioner, the franchisor shall make the copies available to the commissioner for review. For purposes of this section, the commissioner may prescribe by rule or order the format and content of the summary description of the negotiated terms required by subdivision suparagraph (A) of paragraph (2) of subdivision (a).

(d) For purposes of this section, ''material'' means that a reasonable franchisee would view the terms as important in negotiating the franchise.

SEC. 5. Section 31119 of the Corporations Code is amended to read:

31119. (a) It is unlawful to sell any franchise in this state which is subject to registration under this law without first providing to the prospective franchisee, at least 10 business days prior to the execution by the prospective franchisee of any binding franchise or other agreement, or at least 10 business days prior to the receipt of any consideration, whichever occurs first, a copy of the offering circular, together with a copy of all proposed agreements relating to the sale of the franchise.

(b) Nothing in this division shall be construed to prevent a franchisor from providing copies of the offering circular documents to prospective

franchisees through electronic means pursuant to any requirements or conditions that may be imposed by rule or order of the commissioner.

SEC. 6. Section 31125 of the Corporations Code is amended to read:

31125. (a) An application for registration of a material modification of an existing franchise or of existing franchises shall be in a form and contain information as the commissioner may by rule prescribe, and shall be accompanied by a proposed disclosure form as specified in subdivision (b). The application may be included with an application pursuant to Section 31111 or 31121.

(b) Except as provided in subdivisions (c) and (d), it is unlawful to solicit the agreement of a franchisee to a proposed material modification of an existing franchise without first delivering to the franchisee a written disclosure, in a form and containing information as the commissioner may by rule or order require, identifying the proposed modification, either five business days prior to the execution of any binding agreement by the franchisee to the modification or containing a statement that the franchisee may, by written notice mailed or delivered to the franchisor or a specified agent of the franchisor within not less than five business days following the execution of the agreement, rescind the agreement to the material modification.

(c) Any modification of a franchise agreement with an existing franchisee of a franchisor shall be exempted from the provisions of this chapter, if all of the following are met:

(1) The franchisee receives the complete written modification at least five business days prior to the execution of a binding agreement, or providing that the franchisee may, by written notice mailed or delivered to the franchisor or a specified agent of the franchisor within not less than five business days following the execution of the agreement, rescind the agreement to the material modification; provided (A) the agreement is not executed within 12 months after the date of the franchise agreement, and (B) the modification does not waive any right of the franchisee under the California Franchise Relations Act (Chapter 5.5 (commencing with Section 20000) of Division 8 of the Business and Professions Code), but the modification may include a general release of all known and unknown claims by a party to the modification.

(2) The modification meets one of the following:

(A) The proposed modification is in connection with the resolution of a bona fide dispute between the franchisor and the franchisee or the resolution of a claimed or actual franchisee or franchisor default, and the modification is not applied on a franchise systemwide basis at or about the time the modification is executed. A modification shall not be deemed to be made on a franchise systemwide basis if it is offered on a voluntary basis to fewer than 25 percent of the franchisor's California franchises within any 12-month period.

(B) The proposed modification is offered on a voluntary basis to fewer than 25 percent of the franchisor's California franchises within any 12-month period, provided each franchisee is given a right to rescind the modification agreement if the modification is not made in compliance with paragraph (1) of subdivision (c).

(d) Any modification of a franchise agreement with an existing franchise of a franchisee shall be exempted from this chapter if the modification is offered on a voluntary basis and does not substantially and adversely impact the franchisee's rights, benefits, privileges, duties, obligations, or responsibilities under the franchise agreement.

(e) For purposes of this section, "California franchise" means: (1) an existing franchise of a franchisee with any location in this state from which sales, leases, or other transactions between the franchised business and its customers are made or goods or services are distributed, or (2) an existing franchise of a franchisee that is a resident of this state and that owns, controls, or has an equity interest in the franchise.

(f) A franchisor shall not make modifications in consecutive years for the purpose of evading the 25 percent requirements set forth above.

SEC. 7. Section 31300 of the Corporations Code is amended to read:

31300. Any person who offers or sells a franchise in violation of Section 31101, 31110, 31119, 31200, or 31202, or in violation of any provision of this division that provides an exemption from the provisions of Chapter 2 (commencing with Section 31110) of Part 2 or any portions of Part 2, shall be liable to the franchisee or subfranchisor, who may sue for damages caused thereby, and if the violation is willful, the franchisee may also sue for rescission, unless, in the case of a violation of Section 31200 or 31202, the defendant proves that the plaintiff knew the facts concerning the untruth or omission, or that the defendant exercised reasonable care and did not know, or, if he or she had exercised reasonable care, would not have known, of the untruth or omission.

SEC. 8. Section 31402 of the Corporations Code is amended to read:

31402. If, in the opinion of the commissioner, the offer of any franchise is subject to registration under this law and it is being, or it has been, offered for sale without the offer first being registered, the commissioner may order the franchisor or offeror of that franchise to desist and refrain from the further offer or sale of that franchise unless and until the offer has been duly registered under this law. If, after that order has been made, a request for a hearing is filed in writing within 60 days from the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. Unless that hearing is commenced within 15

business days after the request is made (or the person affected consents to a later date), the order shall be deemed rescinded.

If that person fails to file a written request for a hearing within 60 days from the date of service of the order, the order shall be deemed a final order of the commissioner and shall not be subject to review by any court or agency, notwithstanding Section 31501.

SEC. 9. Section 31403 of the Corporations Code is amended to read:

31403. If, in the opinion of the commissioner, the offer of any franchise exempt from registration under this law is being or has been offered for sale without complying with Section 31201, or any other provision that provides an exemption from Chapter 2 (commencing with Section 31110) of Part 2, the commissioner may order the franchisor or offeror of the franchise to desist and refrain from the further offer or sale of the franchise unless and until the offer is made in compliance with this law. If, after that order has been made, a request for a hearing is filed in writing within 60 days from the date of service of the order by the person to whom the order was directed, a hearing shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code and the commissioner shall have all of the powers granted under that chapter. Unless that hearing is commenced within 15 business days after the request is made, or the person affected consents to a later date, the order shall be deemed rescinded.

If that person fails to file a written request for a hearing within 60 days from the date of service of the order, the order shall be deemed a final order of the commissioner and shall not be subject to review by any court or agency, notwithstanding Section 31501.

SEC. 10. Section 31405 of the Corporations Code is amended to read:

31405. (a) Any person who violates any provision of this law, or who violates any rule or order made under this law, shall be liable for a civil penalty not to exceed ten thousand dollars ($10,000) for each violation, which shall be assessed and recovered in a civil action brought in the name of the people of the State of California by the commissioner in any court of competent jurisdiction.

(b) As applied to the penalties for acts in violation of this division, the remedies provided by this section and by other sections of this division are not exclusive, and may be sought and employed in any combination to enforce the provisions of this division.

(c) No action shall be maintained to enforce any liability created under subdivision (a) unless brought before the expiration of four years after the act or transaction constituting the violation.

SEC. 11. Section 31406 is added to the Corporations Code, to read:

31406. (a) If, upon inspection or investigation, based upon a complaint or otherwise, the commissioner has cause to believe that a person is violating any provision of this division or any rule or order promulgated pursuant to this division, the commissioner may issue a citation to that person in writing describing with particularity the basis of the citation. Each citation may contain an order to desist and refrain and an assessment of an administrative penalty not to exceed two thousand five hundred dollars ($2,500) per violation and shall contain reference to this section, including the provisions of subdivision (c). All penalties collected under this section shall be deposited in the State Corporations Fund.

(b) The sanctions authorized under this section shall be separate from, and in addition to, all other administrative, civil, or criminal remedies.

(c) If within 60 days from the receipt of the citation, the person cited fails to notify the commissioner that the person intends to request a hearing as described in subdivision (d), the citation shall be deemed final.

(d) Any hearing under this section shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(e) After the exhaustion of the review procedures provided for in this section, the commissioner may apply to the appropriate superior court for a judgment in the amount of the administrative penalty and order compelling the cited person to comply with the order of the commissioner. The application shall include a certified copy of the final order of the commissioner and shall constitute a sufficient showing to warrant the issuance of the judgment and order.

SEC. 12. Section 31407 is added to the Corporations Code, to read:

31407. (a) If, after examination or investigation, the commissioner has reasonable grounds to believe that any person is conducting business in violation of any provision of this division or related rule or order binding upon it, the commissioner may, by written order addressed to the person, direct the discontinuance of the violation. The order shall be effective immediately, but shall not become final except in accordance with subdivision (b).

(b) An order issued pursuant to this section shall not become final except after notice to the affected person of the commissioner's intention to make the order final and of the reasons for the finding. The commissioner shall also notify the person that upon receiving a request the matter shall be set for hearing to commence within 15 business days after receipt of the request. The person may consent to have the hearing commence at a later date. If no hearing is requested within 60 days after the mailing or service of the required notice, and none is ordered by the commissioner, the order may become final without a hearing and that

person shall immediately discontinue the practices named in the order. If a hearing is requested or ordered it shall be held in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code, and the commissioner shall have all of the powers granted under that chapter. If, upon the conclusion of the hearing, it appears to the commissioner that the person is violating any provision of this division or any related rule or order binding upon it, the commissioner shall make the order of discontinuance final and the person shall immediately discontinue the practices named in the order.

SEC. 13. Section 31408 is added to the Corporations Code, to read:

31408. (a) If the commissioner determines it is in the public interest, the commissioner may include in any administrative action brought under this division, including a stop order, a claim for ancillary relief, including, but not limited to, a claim for rescission, restitution or disgorgement or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action, and the administrative law judge shall have jurisdiction to award additional relief. The person affected may be required to attend remedial education, as directed by the commissioner.

(b) In an administrative action brought under this part the commissioner is entitled to recover costs, which in the discretion of the administrative law judge may include any amount representing reasonable attorney's fees and investigative expenses for the services rendered, for deposit into the State Corporations Fund for the use of the Department of Corporations.

SEC. 14. Section 31410 of the Corporations Code is amended to read:

31410. Any person who willfully violates any provision of this law, or who willfully violates any rule or order under this law, shall upon conviction be fined not more than one hundred thousand dollars ($100,000) 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.

SEC. 15. Section 31411 of the Corporations Code is amended to read:

31411. Any person who willfully employs, directly or indirectly, any device, scheme, or artifice to defraud in connection with the offer or sale of any franchise 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 franchise shall upon conviction be fined not more than one hundred thousand dollars ($100,000) 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.

SEC. 16. Section 22063 is added to the Financial Code, to read:

22063. (a) This division does not apply to a franchise loan made by a franchisor to a franchisee or a subfranchisor or by a subfranchisor to a franchisee.

(b) For purposes of this section:

(1) ''Franchise'' means ''franchise,'' as defined in Section 31005 of the Corporations Code.

(2) ''Franchisee'' means ''franchisee,'' as defined in Section 31006 of the Corporations Code.

(3) ''Franchisor'' means ''franchisor,'' as defined in Section 31007 of the Corporations Code.

(4) ''Area franchise'' means ''area franchise,'' as defined in Section 31008 of the Corporations Code.

(5) ''Subfranchise'' means ''subfranchise,'' as defined in Section 31008.5 of the Corporations Code.

(6) ''Subfranchisor'' means ''subfranchisor,'' as defined in Section 31009 of the Corporations Code.

(7) ''Franchised business'' means a business operated pursuant to a franchise or area franchise by a franchisee or pursuant to a franchise, area franchise or subfranchise by a subfranchisor.

(8) ''Franchise loan'' means a commercial loan, as defined in Section 22502, made by a franchisor to a current or prospective franchisee or subfranchisor or a commercial loan by a subfranchisor to a current or prospective franchisee for the acquisition, construction, operation, development, equipping, expansion, contraction, consolidation, merger, recapitalization, reorganization, or termination of a franchised business provided that the following conditions are satisfied:

(A) The franchisor or subfranchisor making the franchise loan shall comply with all applicable federal and state franchise disclosure and registration laws, regulations, rules and orders, including, but not limited to, the California Franchise Investment Law (Division 5 (commencing with Section 31000) of Title 4 of the Corporations Code) and the Federal Trade Commission Franchise Rule: Disclosure Requirements and Prohibitions Concerning Franchising and Business Opportunity Ventures (Code of Federal Regulations, Title 16, Chapter 1, Subchapter D, Part 436 (16 CFR 436), as amended) in connection with the offer or sale of any franchise, area franchise, or subfranchise to which the franchise loan relates.

(B) The proceeds of the franchise loan are intended by the borrowing franchisee or subfranchisor for use primarily for other than personal, family, or household purposes.

(C) The loan, if secured, is secured solely by the assets of the franchised business to which the franchise loan relates. Property used by the borrower primarily for personal, family, or household purposes, including the borrower's personal residence, shall not be taken as security for the loan.

(D) The loan is subject to the implied covenant of good faith and fair dealing under Section 1655 of the Civil Code.

(E) The lender shall fully and clearly disclose to the borrower, at or before the time the loan is made, the rates of interest, charges, and costs of the loan.

(c) For purposes of subparagraph (B) of paragraph (8) of subdivision (b), a lending franchisor or subfranchisor may rely on any written statement of intended purposes by the borrowing franchisee or subfranchisor. The statement may be a separate statement signed by the borrowing franchisee or subfranchisor or may be contained in another document signed by the borrowing franchisee or subfranchisor. The lending franchisor or subfranchisor may not be required to ascertain that the proceeds of a franchise loan are used in accordance with the statement of intended purposes.

(d) Nothing in this section is intended to abrogate or diminish the application of any other laws that are designed to protect borrowers, including, but not limited to, laws pertaining to licensing, unfair competition, usury and conflicts of interest.

SEC. 17. The Legislature finds and declares that it is not necessary or appropriate in the public interest or for the protection of borrowers to regulate franchise loans made by franchisors to franchisees or subfranchisors or by subfranchisors to franchisees under the limited circumstances described in Section 16 of this act.

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.

SEC. 19. Sections 1 to 15, inclusive, of this act shall become operative January 1, 2005.

SEC. 20. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order for the provisions of this act to take effect at the earliest possible time, it is necessary that this act take effect immediately.

CHAPTER 459

An act to amend Section 52282 of the Food and Agricultural Code, relating to seeds.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 52282 of the Food and Agricultural Code is amended to read:

52282. The secretary and, under the supervision and direction of the secretary, the commissioner of each county and the qualified representative of the commissioner, shall enforce this chapter and carry out its provisions and requirements. The secretary shall have the discretion to determine which enforcement activities are conducted by the commissioner in each county and which enforcement activities shall be conducted by department personnel.

CHAPTER 460

An act to amend Sections 2203, 2275, 12042, 12046, 24011, 27571, 27572, 32505, 32511, 35013, and 80074 of and to add Section 2003 to, the Food and Agricultural Code, relating to agriculture.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 2003 is added to the Food and Agricultural Code, to read:

2003. The California Agricultural Commissioners and Sealers Association shall be recognized as the official representative body on behalf of county agricultural commissioners and sealers.

SEC. 2. Section 2203 of the Food and Agricultural Code is amended to read:

2203. The commissioner shall be paid his or her compensation and traveling and incidental expenses while he or she is attending the annual meeting of the California Agricultural Commissioners and Sealers Association or its successor and any other meetings he or she is required by the secretary to attend, or while he or she is on any service that requires him or her to go outside the county if the performance of that service has been authorized by the board of supervisors, the secretary or director, or this code.

SEC. 3. Section 2275 of the Food and Agricultural Code is amended to read:

2275. The commissioner, for the purpose of learning the best and most efficacious methods of performing his or her duties, shall attend the annual meeting of the California Agricultural Commissioners and Sealers Association or its successor, and any other meetings as the secretary or director shall require.

SEC. 4. Section 12042 of the Food and Agricultural Code is amended to read:

12042. There is in the department an Agricultural Pest Control Advisory Committee, appointed by the secretary or director, consisting of the following members:

(a) One member representing agricultural pest control advisers.

(b) One member representing agricultural pest control businesses.

(c) One member representing pest control maintenance gardeners.

(d) One member representing pest control aircraft pilots.

(e) One member representing pesticide dealers.

(f) One member representing commercial applicator certificate holders.

(g) One member representing registrants, as defined in Section 12755.

(h) One member representing the California Agricultural Commissioners and Sealers Association.

(i) One member representing the University of California, Division of Agriculture and Natural Resources, who is nominated by the board of regents and who specializes in pest management.

(j) One member representing the Board of Trustees of the California State University system.

(k) One member representing the Board of Governors of the California Community College system.

(*l*) One member representing producers, as defined in Section 56110.

(m) One member representing the general public.

SEC. 5. Section 12046 of the Food and Agricultural Code is amended to read:

12046. Initial appointments to the committee shall be made as follows:

(a) Representatives for the public, the California Community College system, the State University system, and the pest control maintenance gardeners shall be appointed for one year.

(b) Representatives for pest control aircraft pilots, commercial applicator certificate holders, pesticide dealers, registrants as defined in Section 12755, and the California Agricultural Commissioners and Sealers Association shall be appointed for two years.

(c) Representatives for agricultural pest control advisers, agricultural pest control businesses, the University of California Extension Service, and producers shall be appointed for three years.

SEC. 6. Section 24011 of the Food and Agricultural Code is amended to read:

24011. A horse exhibited at an event that receives a prohibited substance or any NSAID for which a maximum detectable plasma level has been established in Section 24011.5, within 48 hours prior to any withdrawal time established by or pursuant to this chapter, shall not be eligible for show, competition, or sale, unless the following requirements have been met and the facts requested are submitted to the secretary in writing:

(a) Medication shall be therapeutic and necessary for treatment of an illness or injury.

(b) A horse shall be withdrawn from a show or competition for a period of not less than 24 hours after a prohibited substance is administered, unless the secretary determines a different withdrawal period for a specific prohibited substance or class of substances. A horse shall be withdrawn from a public sale for a period of not less than 72 hours after a prohibited substance or NSAID is administered. The withdrawal period for anabolic steroids is 90 days after administration and the withdrawal period for fluphenazine or reserpine is 45 days after administration.

(c) The medication shall be administered by a licensed veterinarian, the trainer, or owner.

(d) Medication shall be identified as to the amount, strength, and mode of administration.

(e) The statement shall include the date and time of administration of the medication.

(f) The horse shall be identified by its name, age, sex, color, and entry number.

(g) The statement shall contain the diagnosis of the attending veterinarian and reason for administering the medication.

(h) The statement shall be signed by the person administering the medication.

(i) The statement shall be filed with the event manager of the public horse show or competition or general manager of the horse sale within

one hour after administration or one hour after the event manager of the event returns to duty, if administration is at a time other than during show or sale hours.

(j) The statement shall be signed by the event manager or his or her designated representative and time of receipt recorded on the statement by the event manager or his or her designated representative.

If the chemical analysis of the sample taken from a horse so treated indicates the presence of a prohibited substance and all the requirements of this section have been fully complied with, the information contained in the medication report and any other relevant evidence shall be considered at any hearing provided under this chapter in determining whether any provision of this chapter has been violated.

SEC. 7. Section 27571 of the Food and Agricultural Code is amended to read:

27571. (a) The secretary shall appoint a Shell Egg Advisory Committee consisting of seven members, six of whom shall be selected by the secretary from egg handlers and be representative of the egg industry. The secretary shall appoint two alternates who may serve in the absence of any of the six egg handler representatives. The California Agricultural Commissioners and Sealers Association shall annually designate one of its members who shall serve in a nonvoting capacity as the seventh member of the committee. The secretary may appoint one additional member on the committee, who shall be a public member. The members of the committee shall receive no salary.

(b) Upon the secretary's request, the committee shall submit to the secretary the names of three or more natural persons, each of whom shall be a citizen and resident of this state and not a producer, shipper, or processor nor financially interested in any producer, shipper, or processor, for appointment by the secretary as a public member of the committee. The secretary may appoint one of the nominees as the public member on the committee. If all nominees are unsatisfactory to the secretary, the committee shall continue to submit lists of nominees until the secretary has made a selection. Any vacancy in the office of the public member of the committee shall be filled by appointment by the secretary from the nominee or nominees similarly qualified submitted by the committee. The public member of the committee shall represent the interests of the general public in all matters coming before the committee and shall have the same voting and other rights and immunities as other members of the committee.

SEC. 8. Section 27572 of the Food and Agricultural Code is amended to read:

27572. The term of office for each member, other than the member designated by the California Agricultural Commissioners and Sealers Association, of the committee shall be for three years. Appointment of

the first voting members shall be made so that the term of office for two voting members shall expire at the end of one year, two at the end of two years, and two at the end of three years. Thereafter, appointments for the voting members shall be for full three-year terms.

SEC. 9. Section 32505 of the Food and Agricultural Code is amended to read:

32505. ''Dairy farm'' means any place or premises upon which milk is produced for sale or other distribution and where more than two cows or water buffalo, or six goats, sheep, or other hooved mammals, are in lactation.

SEC. 10. Section 32511 of the Food and Agricultural Code is amended to read:

32511. ''Milk'' means the unadulterated lacteal secretion which is obtained from the udder of a cow, water buffalo, goat, sheep, or other hooved mammal.

SEC. 11. Section 35013 of the Food and Agricultural Code is amended to read:

35013. Each application shall be accompanied by a fee in an amount which is established for the particular license by Section 35221.

SEC. 12. Section 80074 of the Food and Agricultural Code is amended to read:

80074. After consultation with the Secretary of the Resources Agency and after a public hearing, the secretary may add to, or remove from, the jurisdiction of this division a native plant. A public hearing on native plants may be held at least once every 24 months in a county subject to this division and in a location that is convenient to a large segment of the public.

In deciding whether to call a public hearing, the secretary may consider a request from a public or private group, including concerned citizens, and the secretary shall convene such a hearing when requested by resolution of any county board of supervisors. The secretary may consider at the hearing which plants are in need of protection and whether the boundaries of the area to be protected should be changed pursuant to Section 80003.

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.

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CHAPTER 461

An act to amend Sections 25004, 25102.1, 25231, and 25532 of, and to repeal Section 28506 of, the Corporations Code, and to amend Section 22337 of the Financial Code, relating to financial transactions.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 25004 of the Corporations Code is amended to read:

25004. (a) ''Broker-dealer'' means any person engaged in the business of effecting transactions in securities in this state for the account of others or for his own account. ''Broker-dealer'' also includes a person engaged in the regular business of issuing or guaranteeing options with regard to securities not of his own issue. ''Broker-dealer'' does not include any of the following:

(1) Any other issuer.

(2) An agent, when an employee of a broker-dealer or issuer.

(3) A bank, trust company, or savings and loan association.

(4) Any person insofar as he buys or sells securities for his own account, either individually or in some fiduciary capacity, but not as part of a regular business.

(5) A person who has no place of business in this state if he effects transactions in this state exclusively with (A) the issuers of the securities involved in the transactions or (B) other broker-dealers.

(6) A broker licensed by the Real Estate Commissioner of this state when engaged in transactions in securities exempted by subdivision (f) or (p) of Section 25100 or in securities the issuance of which is subject to authorization by the Real Estate Commissioner of this state or in transactions exempted by subdivision (e) of Section 25102.

(7) An exchange certified by the Commissioner of Corporations pursuant to this section when it is issuing or guaranteeing options. The commissioner may by order certify an exchange under this section upon such conditions as he by rule or order deems appropriate, and upon notice and opportunity to be heard he may suspend or revoke such certification, if he finds such certification, suspension, or revocation to be in the public interest and necessary and appropriate for the protection of investors.

(b) For purposes of this section, an agent is an employee of a broker-dealer under paragraph (2) of subdivision (a) when the agent is employed by or associated with the broker-dealer under all of the following conditions:

(1) The agent is subject to the supervision and control of the broker-dealer.

(2) The agent performs under the name, authority, and marketing policies of the broker-dealer.

(3) The agent discloses to investors the identity of the broker-dealer.

(4) The agent is reported pursuant to subdivision (c) of Section 25210 and the rules adopted thereunder.

SEC. 2. Section 25102.1 of the Corporations Code is amended to read:

25102.1. The following transactions are not subject to Sections 25110, 25120, and 25130:

(a) Any offer or sale of a security to a ''qualified purchaser'' as that term is defined by rule of the Securities and Exchange Commission pursuant to Section 18(b)(3) of the Securities Act of 1933 (15 U.S.C. 77r), if all of the following requirements are met:

(1) A notice is filed with the commissioner prior to an offer in this state, along with any documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate.

(2) A consent to service of process under Section 25165 is filed with the notice required by paragraph (1).

(3) Payment of a notice filing fee provided for in subdivision (b) of Section 25608.1.

(b) Any offer and sale of a security with respect to a transaction that is exempt from registration under Section 4(4) of the Securities Act of 1933 pursuant to Section 18 (b) (4) (B) of that act.

(c) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(C) of that act.

(d) Any offer or sale of a security with respect to a transaction that is exempt from registration under the Securities Act of 1933 pursuant to Section 18(b)(4)(D) of that act, if all of the following requirements are met:

(1) A notice in the form of a copy of the completed Form D (17 C.F.R. 239.500) filed with the Securities and Exchange Commission is filed with the commissioner within 15 days of the first sale in this state, along with documents filed with the Securities and Exchange Commission in annual or periodic reports that the commissioner by rule or order deems appropriate. The commissioner may allow for a notice in the form of the electronic transmission of the information in Form D.

(2) A consent to service of process under Section 25165 is filed with the notice as required by paragraph (1).

(3) Payment of the notice filing fee provided for in subdivision (c) of Section 25608.1 is made.

(e) Notwithstanding the language of subdivisions (a), (b), (c), and (d) of this section, an issuer may file an application for qualification pursuant to Section 25111, 25112, 25113, 25121, 25131, or 25142.

SEC. 3. Section 25231 of the Corporations Code is amended to read:

25231. (a) Any investment adviser, or any person who contemplates becoming an investment adviser, may apply for a certificate to act as an investment adviser by filing with the commissioner an application. The application shall be accompanied by the consent to service of process specified in Section 25240 and shall contain information, in such form and detail, as the commissioner may by rule prescribe.

(b) Unless otherwise provided by rule or order of the commissioner, all investment adviser and investment adviser representative applications, amendments, reports, notices, related filings, and fees required to be filed with the commissioner pursuant to this title shall be filed electronically with and transmitted to the Web-based Investment Adviser Registration Depository operated by the National Association of Securities Dealers.

SEC. 4. 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 30 days 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. 5. Section 28506 of the Corporations Code is repealed.

SEC. 6. Section 22337 of the Financial Code is amended to read:

22337. Each licensed finance lender shall:

(a) Deliver or cause to be delivered to the borrower, or any one thereof, at the time the loan is made, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any. The statement shall show the date, amount, and maturity of the loan contract, how and when repayable, the nature of the security for the loan, if any, and the agreed rate of charge or the annual percentage rate pursuant to Regulation Z promulgated by the Board of Governors of the Federal Reserve System (12 C.F.R. 226).

(b) Obtain from the borrower a signed statement as to whether any person has performed any act as a broker in connection with the making of the loan. If the statement discloses that a broker or other person has participated, then the finance lender shall obtain a full statement of all sums paid or payable to the broker or other person. The finance lender shall keep these statements for a period of three years from and after the date the loan has been paid in full, or has matured according to its terms, or has been charged off.

(c) Permit payment to be made in advance in any amount on any contract of loan at any time. The licensee may apply the payment first to any agreed prepayment penalty, then to all charges due, including charges at the agreed rate or rates up to the date of payment, not to exceed the applicable maximum rate permitted by this article.

(d) Deliver or cause to be delivered to the person making any cash payment, or to the person who requests a receipt at the time of making any payment, at the time payment is made on account of any loan, a plain and complete receipt showing the total amount received and identifying the loan contract upon which the payment is applied.

(e) Upon repayment of any loan in full, release all security for the loan, endorse and return any certificate of ownership, and cancel or plainly mark ''paid'' and return to the borrower or person making final payment, any note, mortgage, security agreement, trust deed, assignment, or order signed by the borrower, or an optical image

reproduction thereof, except those documents that are a part of the court record in any action, or that have been delivered to a third person for the purpose of carrying out their terms, or a security agreement that secures any other indebtedness of a borrower to the licensee, or original documents otherwise required by law. When a trust deed on real property has been taken as security for a loan that has been subsequently paid in full, a duly executed request for reconveyance shall be delivered to the trustor or trustee for the purpose of recording a reconveyance. A termination statement, furnished to the borrower as provided for in Sections 9512 and 9513 of the Commercial Code, shall be deemed a release of the security when a financing statement has been filed pursuant to Section 9501 of the Commercial Code.

For purposes of this subdivision, an optical image reproduction shall meet all of the following requirements:

(1) The optical image storage media used to store the document shall be nonerasable write once, read many (WORM) optical image media that does not allow changes to the stored document.

(2) The optical image reproduction shall be made consistent with the minimum standards of quality approved by either the National Institute of Standards and Technology or the Association for Information and Image Management.

(3) Written authentication identifying the optical image reproduction as an exact unaltered copy of the note, trust deed, mortgage, security agreement, assignment or order shall be stamped or printed on the optical image reproduction.

(f) Deliver or cause to be delivered to the potential borrower, or any one thereof, at the time the licensee first requires or accepts any signed instrument or the payment of any fee, a statement showing in clear and distinct terms the name, address, and license number of the finance lender and the broker, if any.

CHAPTER 462

An act relating to health, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. The sum of two million three hundred thousand dollars ($2,300,000) is hereby appropriated from the Federal Trust Fund

to the State Department of Health Services for the purpose of implementing bioterrorism preparedness measures by state and local jurisdictions.

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 best enhance California's preparedness for, and response to, the threat of bioterrorism, and make funds appropriated for that purpose under this act available at the earliest time possible, thereby facilitating the orderly and timely administration of state government, it is necessary that this act take effect immediately.

CHAPTER 463

An act to amend Section 56.104 of the Civil Code, relating to confidentiality of medical information.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 56.104 of the Civil Code is amended to read:

56.104. (a) Notwithstanding subdivision (c) of Section 56.10, except as authorized in paragraph (1) of subdivision (c) of Section 56.10, no provider of health care, health care service plan, or contractor may release medical information to persons or entities authorized by law to receive that information pursuant to subdivision (c) of Section 56.10, if the requested information specifically relates to the patient's participation in outpatient treatment with a psychotherapist, unless the person or entity requesting that information submits to the patient pursuant to subdivision (b) and to the provider of health care, health care service plan, or contractor a written request, signed by the person requesting the information or an authorized agent of the entity requesting the information, that includes all of the following:

(1) The specific information relating to a patient's participation in outpatient treatment with a psychotherapist being requested and its specific intended use or uses.

(2) The length of time during which the information will be kept before being destroyed or disposed of. A person or entity may extend that timeframe, provided that the person or entity notifies the provider, plan, or contractor of the extension. Any notification of an extension shall

include the specific reason for the extension, the intended use or uses of the information during the extended time, and the expected date of the destruction of the information.

(3) A statement that the information will not be used for any purpose other than its intended use.

(4) A statement that the person or entity requesting the information will destroy the information and all copies in the person's or entity's possession or control, will cause it to be destroyed, or will return the information and all copies of it before or immediately after the length of time specified in paragraph (2) has expired.

(b) The person or entity requesting the information shall submit a copy of the written request required by this section to the patient within 30 days of receipt of the information requested, unless the patient has signed a written waiver in the form of a letter signed and submitted by the patient to the provider of health care or health care service plan waiving notification.

(c) For purposes of this section, ''psychotherapist'' means a person who is both a ''psychotherapist'' as defined in Section 1010 of the Evidence Code and a ''provider of health care'' as defined in subdivision (i) of Section 56.05.

(d) This section does not apply to the disclosure or use of medical information by a law enforcement agency or a regulatory agency when required for an investigation of unlawful activity or for licensing, certification, or regulatory purposes, unless the disclosure is otherwise prohibited by law.

(e) Nothing in this section shall be construed to grant any additional authority to a provider of health care, health care service plan, or contractor to disclose information to a person or entity without the patient's consent.

CHAPTER 464

An act to amend Section 1635.5 of, and to add Sections 1625.2, 1635.7, and 1658.8 to, the Business and Professions Code, relating to dentistry.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 1625.2 is added to the Business and Professions Code, to read:

1625.2. (a) For purposes of subdivision (e) of Section 1625, the ownership or management, by a tax-exempt nonprofit corporation supported and maintained in whole or in substantial part by donations, bequests, gifts, grants, government funds, or contributions, that may be in the form of money, goods, or services, of a place where dental operations are performed, shall not be construed to be the unlicensed practice of dentistry, as long as all of the following apply:

(1) The entity obtains the board's approval to offer dental services pursuant to regulations adopted by the board.

(2) The entity does nothing to interfere with, control, or otherwise direct the professional judgment of or provision of dental services by a licensee or dental assistant acting within his or her scope of practice as defined in this chapter.

(3) The licensees and dental assistants of the entity providing services are in compliance with all applicable provisions of this chapter.

(4) The entity is otherwise in compliance with this chapter and all other applicable provisions of state and federal law.

(b) This section does not apply to any of the following entities:

(1) A primary care clinic that is licensed pursuant to subdivision (a) of Section 1204 of the Health and Safety Code.

(2) A primary care clinic that is exempt from licensure pursuant to subdivision (b), (c), or (h) of Section 1206 of the Health and Safety Code.

(3) A clinic owned or operated by a public hospital or health system.

(4) A clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code.

SEC. 2. Section 1635.5 of the Business and Professions Code is amended to read:

1635.5. (a) Notwithstanding Section 1634, the board may grant a license to practice dentistry to an applicant who has not taken an examination before the board, if the applicant submits all of the following to the board:

(1) A completed application form and all fees required by the board.

(2) Proof of a current license issued by another state to practice dentistry that is not revoked or suspended or otherwise restricted.

(3) Proof that the applicant has either been in active clinical practice or has been a full-time faculty member in an accredited dental education program and in active clinical practice for a total of at least 5,000 hours in five of the seven consecutive years immediately preceding the date of his or her application under this section. The clinical practice requirement shall be deemed met if documentation of any of the following is submitted:

(A) The applicant may receive credit for two of the five years of clinical practice by demonstrating completion of a residency training

program accredited by the American Dental Association Commission on Dental Accreditation, including, but not limited to, a general practice residency, an advanced education in general dentistry program, or a training program in a specialty recognized by the American Dental Association.

(B) If an applicant provides proof of at least two years of clinical practice or receives two years of credit as defined in subparagraph (A), he or she may commit to completing the remainder of the five-year requirement by filing with the board a copy of a pending contract to practice dentistry full time in a primary care clinic licensed under subdivision (a) of Section 1204 of the Health and Safety Code or in a primary care clinic exempt from licensure pursuant to subdivision (c) of Section 1206 of the Health and Safety Code, or in a clinic owned or operated by a public hospital or health system, or a clinic owned and operated by a hospital that maintains the primary contract with a county government to fill the county's role under Section 17000 of the Welfare and Institutions Code. The board may periodically request verification of compliance with these requirements, and may revoke the license upon a finding that the employment requirement, or any other requirement of this subparagraph, has not been met. The board may, by regulation, define ''full time'' for the purposes of this paragraph.

(C) If an applicant provides proof of at least two years of clinical practice or receives two years of credit as defined in subparagraph (A), he or she may commit to completing the remainder of the five-year requirement by filing with the board a copy of a pending contract to teach or practice dentistry full time in an accredited dental education program as approved by the Dental Board of California. The board may periodically request verification of compliance with these requirements, and may revoke the license upon a finding that the employment requirement, or any other requirement of this subparagraph, has not been met.

(4) Proof that the applicant has not been subject to disciplinary action by any state in which he or she is or has been previously licensed to practice dentistry. If the applicant has been subject to disciplinary action, the board shall review that action to determine if it presents sufficient evidence of a violation of Article 4 (commencing with Section 1670) to warrant the submission of additional information from the applicant or the denial of the application for licensure.

(5) A signed release allowing the disclosure of information from the National Practitioner Data Bank and the verification of registration status with the federal Drug Enforcement Administration. The board shall review this information to determine if it presents sufficient evidence of a violation of Article 4 (commencing with Section 1670) to

warrant the submission of additional information from the applicant or the denial of the application for licensure.

(6) Proof that the applicant has not failed the examination for licensure to practice dentistry under this chapter within five years prior to the date of his or her application for a license under this section.

(7) An acknowledgement by the applicant executed under penalty of perjury and automatic forfeiture of license, of the following:

(A) That the information provided by the applicant to the board is true and correct, to the best of his or her knowledge and belief.

(B) That the applicant has not been convicted of an offense involving conduct that would violate Section 810.

(8) Documentation of 50 units of continuing education completed within two years of the date of his or her application under this section. The continuing education shall include the mandatory coursework prescribed by the board pursuant to subdivision (b) of Section 1645.

(9) Any other information as specified by the board to the extent it is required of applicants for licensure by examination under this article.

(b) The board shall provide in the application packet to each out-of-state dentist pursuant to this section the following information:

(1) The location of dental manpower shortage areas that exist in the state.

(2) Those not-for-profit clinics and public hospitals seeking to contract with licensees for dental services.

(c) (1) The board shall review the impact of this section on the availability of dentists in California and report to the appropriate policy and fiscal committees of the Legislature by January 1, 2005. The report shall include a separate section providing data specific to those dentists who intend to fulfill the alternative clinical practice requirements of subparagraph (B) of paragraph (3) of subdivision (a). The report shall include, but not be limited to, all of the following:

(A) The total number of applicants from other states who have sought licensure.

(B) The number of dentists from other states licensed pursuant to this section, as well as the number of licenses not granted and the reasons why each license was not granted.

(C) The location of the practice of dentists licensed pursuant to this section.

(D) The number of dentists licensed pursuant to this section who establish a practice in a rural area or in an area designated as having a shortage of practicing dentists or no dentists at all.

(E) The length of time dentists licensed pursuant to this section maintained their practice in the reported location. This information shall be reported separately for dentists described in subparagraphs (C) and (D).

(2) In identifying a dentist's location of practice, the board shall use Medical Service Study Areas or other appropriate geographic descriptions for regions of the state.

(3) If appropriate, the board may report the information required by paragraph (1) separately for primary care dentists and specialists.

(d) The board is authorized to contract with a third party or parties to review applications filed under this section and to advise the board as to whether the applications are complete. The contracting party, its agents, and its employees shall agree to be bound by all provisions of law applicable to the board, its members, and staff, governing custody and confidentiality of materials submitted by applicants for licensure.

SEC. 3. Section 1635.7 is added to the Business and Professions Code, to read:

1635.7. Any person licensed pursuant to Section 1635.5 shall be required to fulfill continuing education requirements established by the board pursuant to Section 1645 before his or her license is eligible to be renewed in accordance with this chapter.

SEC. 4. Section 1658.8 is added to the Business and Professions Code, to read:

1658.8. Notwithstanding any other provision of this chapter, a licensed dentist may operate a mobile dental unit provided by his or her property and casualty insurer as a temporary substitute site for the practice registered by him or her pursuant to Section 1650, if both of the following requirements are met:

(a) The licensee's registered place of practice has been rendered and remains unusable due to loss or calamity.

(b) The licensee's insurer registers the unit with the board in compliance with Section 1657.

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 465

An act to amend Sections 37701, 37702, 37703, 37704, 37706, and 37707 of, to add Sections 37710 and 37711 to, and to add and repeal

Sections 37712 and 37713 of, the Education Code, relating to school districts.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 37701 of the Education Code is amended to read:

37701. The school district shall provide on an annual basis, while operating a school on a four-day school week, not less than 560 hours of instructional time for kindergarten, not less than 700 hours of instructional time for grades 1, 2, and 3, and not less than 845 hours of instructional time for grades 4 to 12, inclusive. The school district may exceed these minimum instructional times except that no pupil in a kindergarten shall be kept in school more than four hours in any day, exclusive of recesses. The school day may not exceed eight hours, nor may the school week be less than four days.

SEC. 2. Section 37702 of the Education Code is amended to read:

37702. Prior to operating a school on a four-day school week, the school district shall secure the approval of the governing board of the district and of any collective bargaining agents representing employees of the school district.

SEC. 3. Section 37703 of the Education Code is amended to read:

37703. A school site council in the school district shall be involved in the planning and evaluation of a four-day school week.

SEC. 4. Section 37704 of the Education Code is amended to read:

37704. The school district shall consider the impact of the longer schoolday on primary grade pupils, and the impact of the four-day school week on working parents who may be required to find child care services for their schoolage children due to the shortened school week.

SEC. 5. Section 37706 of the Education Code is amended to read:

37706. If a school district elects to operate a school on a four-day school week as authorized by this chapter, the school district shall be entitled to receive the same support, but not more support, from the State School Fund due to the average daily attendance at the schools within the school district that it would have received if the school district had been operating under the provisions of law relating to the 175-day school year.

SEC. 6. Section 37707 of the Education Code is amended to read:

37707. If the school district elects to operate a school on a four-day school week pursuant to this chapter, the reduced number of schooldays in the school district shall not affect the rights of certificated or classified employees of the school district with regard to classification, tenure, or

notice, and shall not otherwise affect the contract rights of the employees.

SEC. 7. Section 37710 is added to the Education Code, to read:

37710. If any school operating a four-day school week pursuant to Section 37711, 37712, or 37713 fails to achieve its Academic Performance Index growth target pursuant to Section 52052, the authority of that school to operate a four-day school week shall be permanently revoked commencing with the beginning of the following school year.

SEC. 8. Section 37711 is added to the Education Code, to read:

37711. Beginning in the 2004–05 fiscal year, the following school districts in San Diego County may operate one or more schools in their respective districts on a four-day school week if the districts comply with the instructional time requirements specified in Section 37701 and the other requirements of this chapter:

(a) Borrego Springs Unified School District.

(b) Julian Union Elementary School District.

(c) Julian Union High School District.

(d) Warner Unified School District.

SEC. 9. Section 37712 is added to the Education Code, to read:

37712. (a) Beginning in the 2004–05 fiscal year, the Jamul-Dulzura Union Elementary School District may operate one or more schools in the school district on a four-day school week if the district complies with the instructional time requirements specified in Section 37701 and the other requirements of this chapter.

(b) This section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 10. Section 37713 is added to the Education Code, to read:

37713. (a) Beginning in the 2004–05 fiscal year, the Marysville Joint Unified School District may operate a high school and one other school in the school district on a four-day school week if the district complies with the instructional time requirements specified in Section 37701 and the other requirements of this chapter.

(b) This section shall become inoperative on July 1, 2006, and as of January 1, 2007, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2007, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 11. 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 surrounding the Borrego Springs Unified School District, the Julian Union Elementary School District,

the Julian Union High School District, the Warner Unified School District, the Jamul-Dulzura Union Elementary School District, and the Marysville Joint Unified School District. The facts constituting the special circumstances are the significant transportation costs incurred by those school districts and the small size of those school districts.

CHAPTER 466

An act to add Section 31539 to the Government Code, relating to county employees' retirement.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 31539 is added to the Government Code, to read:

31539. (a) The board of retirement may, in its discretion, correct any error made in the calculation of a retired member's monthly allowance or any other benefits under this chapter, if either of the following exist:

(1) The error in the calculation of the member's monthly allowance or other benefits under this chapter was made as a result of fraudulent reports for compensation made, or caused to be made, by the member for his or her own benefit.

(2) The member caused his or her final compensation to be improperly increased or otherwise overstated at the time of retirement and the system applied that overstated amount as the basis for calculating the member's monthly retirement allowance or other benefits under this chapter.

(b) The retirement allowance or other benefits under this chapter with respect to a retired member described in subdivision (a) shall be adjusted prospectively to the amount that would have been payable if the overstatement of the member's final compensation had not occurred.

(c) Adjustment of the member's retirement allowance or other benefits may also be implemented retroactively and include the collection or return of the overpayment of benefits. The board of retirement may direct staff to correct the overpayment of benefits by offsetting the amount to be recovered against future benefits. Adjustments to correct the overpayment of benefits may also be made by adjusting the allowance so that the retired member or the retired

member and his or her beneficiary, as the case may be, will receive the actuarial equivalent of the allowance to which the member is entitled.

(d) The rights and remedies provided in this section are in addition to any other rights and remedies any party may have at law or in equity. Nothing in this section shall preclude any party from instituting an action for declaratory or other relief in lieu of proceeding under this section.

(e) The period of limitation of actions under this section shall be 10 years and that period shall commence either from the date of payment or upon discovery of the facts described in subdivision (a), whichever date is later. The board shall determine the applicability of the period of limitation in any case, and its determination with respect to the running of any period of limitation shall be conclusive and binding for purposes of correcting the error.

CHAPTER 467

An act to amend Sections 801, 4800, 4804.5, 4832, 4833, 4842.2, 4842.5, 4848, and 4875.4 of, and to add Section 4830.7 to, the Business and Professions Code, relating to veterinary medicine, and making an appropriation therefor.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 801 of the Business and Professions Code is amended to read:

801. (a) Every insurer providing professional liability insurance to a person who holds a license, certificate, or similar authority from or under any agency mentioned in subdivision (a) of Section 800 (except as provided in subdivisions (b), (c), (d), and (e)) shall send a complete report to that agency as to any settlement or arbitration award over three thousand dollars ($3,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(b) Every insurer providing professional liability insurance to a physician and surgeon licensed pursuant to Chapter 5 (commencing with Section 2000) or the Osteopathic Initiative Act shall send a complete report to the Medical Board of California or the Osteopathic Medical

Board of California, as appropriate, as to any settlement over thirty thousand dollars ($30,000); or arbitration award of any amount; or civil judgment of any amount, whether or not vacated by a settlement after entry of the judgment, that was not reversed on appeal; of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. A settlement over thirty thousand dollars ($30,000) shall also be reported if the settlement is based on the licensee's negligence, error, or omission in practice, or by the licensee's rendering of unauthorized professional services, and a party to the settlement is a corporation, medical group, partnership, or other corporate entity in which the licensee has an ownership interest or that employs or contracts with the licensee. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto, within 30 days after service of the arbitration award on the parties, or within 30 days after the date of entry of the civil judgment.

(c) Every insurer providing professional liability insurance to a person licensed pursuant to Chapter 13 (commencing with Section 4980) or Chapter 14 (commencing with Section 4990) shall send a complete report to the Board of Behavioral Science Examiners as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or by his or her rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(d) Every insurer providing professional liability insurance to a dentist licensed pursuant to Chapter 4 (commencing with Section 1600) shall send a complete report to the Dental Board of California as to any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or personal injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized professional services. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(e) Every insurer providing liability insurance to a veterinarian licensed pursuant to Chapter 60 (commencing with Section 4825) shall send a complete report to the Veterinary Medical Board of any settlement or arbitration award over ten thousand dollars ($10,000) of a claim or action for damages for death or injury caused by that person's negligence, error, or omission in practice, or rendering of unauthorized

professional service. The report shall be sent within 30 days after the written settlement agreement has been reduced to writing and signed by all parties thereto or within 30 days after service of the arbitration award on the parties.

(f) The insurer shall notify the claimant, or if the claimant is represented by counsel, the insurer shall notify the claimant's attorney, that the report required by subdivision (a), (b), (c), or (d) has been sent to the agency. If the attorney has not received this notice within 45 days after the settlement was reduced to writing and signed by all of the parties, the arbitration award was served on the parties, or the date of entry of the civil judgment, the attorney shall make the report to the agency.

(g) Notwithstanding any other provision of law, no insurer shall enter into a settlement without the written consent of the insured, except that this prohibition shall not void any settlement entered into without that written consent. The requirement of written consent shall only be waived by both the insured and the insurer. This section shall only apply to a settlement on a policy of insurance executed or renewed on or after January 1, 1971.

SEC. 2. Section 4800 of the Business and Professions Code is amended to read:

4800. There is in the Department of Consumer Affairs a Veterinary Medical Board in which the administration of this chapter is vested. The board consists of seven members, three of whom shall be public members.

This section shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

The repeal of this section renders the board subject to the review provided for by Division 1.2 (commencing with Section 473).

SEC. 3. Section 4804.5 of the Business and Professions Code is amended to read:

4804.5. 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.

This section shall become inoperative on July 1, 2009, and, as of January 1, 2010, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2010, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 4830.7 is added to the Business and Professions Code, to read:

4830.7. Whenever any licensee under this chapter has reasonable cause to believe an animal under its care has been a victim of animal abuse or cruelty, as prescribed in Section 597 of the Penal Code, it shall be the duty of the licensee to promptly report it to the appropriate law enforcement authorities of the county, city, or city and county in which it occurred. No licensee shall incur any civil liability as a result of making any report pursuant to this section or as a result of making any report of a violation of subdivisions (a), (b), and (c) of Section 597 of the Penal Code.

SEC. 5. Section 4832 of the Business and Professions Code is amended to read:

4832. (a) The board shall establish an advisory committee on issues pertaining to the practice of veterinary technicians, that shall be known as the Registered Veterinary Technician Committee, hereafter referred to as the committee.

(b) It is the intent of the Legislature that the Veterinary Medical Board, in implementing this article, give specific consideration to the recommendations of the Registered Veterinary Technician Committee.

SEC. 6. Section 4833 of the Business and Professions Code is amended to read:

4833. (a) The committee shall advise and may assist the board in the examination of applicants for veterinary technician registration. The examination shall be held at least once a year at the times and places designated by the board.

(b) The committee may investigate and evaluate each applicant applying for registration as a registered veterinary technician and may recommend to the board for final determination the admission of the applicant to the examination and eligibility for registration.

(c) The committee may make recommendations to the board regarding the establishment and operation of the continuing education requirements authorized by Section 4838 of this article.

(d) The committee shall advise and may assist the board in the inspection and approval of all schools or institutions offering a curriculum for training registered veterinary technicians.

(e) The committee may advise and assist the board in developing regulations to establish animal health care tasks and the appropriate degree of supervision required for those tasks for registered veterinary technicians and for unregistered assistants.

(f) The committee may advise and assist the board in developing regulations to define subdivision (c) of Section 4840, including, but not limited to, procedures for citations and fines, in accordance with Section 125.9.

SEC. 7. Section 4842.2 of the Business and Professions Code is amended to read:

4842.2. All funds collected by the board under this article shall be deposited in the Veterinary Medical Board Contingent Fund.

SEC. 8. Section 4842.5 of the Business and Professions Code is amended to read:

4842.5. The amount of fees prescribed by this article is that fixed by the following schedule:

(a) The fee for filing an application for examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purposes of this chapter, not to exceed two hundred dollars ($200).

(b) The fee for the California registered veterinary technician examination shall be set by the board in an amount it determines is reasonably necessary to provide sufficient funds to carry out the purposes of this chapter, not to exceed three hundred dollars ($300).

(c) The initial registration fee shall be set by the board at not more than one hundred dollars ($100), except that, if the license is issued less than one year before the date on which it will expire, then the fee shall be set by the board at not more than fifty dollars ($50). The board may adopt regulations to provide for the waiver or refund of the initial registration fee where the registration is issued less than 45 days before the date on which it will expire.

(d) The biennial renewal fee shall be set by the board at not more than one hundred dollars ($100).

(e) The delinquency fee shall be twenty-five dollars ($25).

(f) Any charge made for duplication or other services shall be set at the cost of rendering the services.

(g) The fee for filing an application for approval of a school pursuant to Section 4843 shall be set by the board at an amount not to exceed the cost of the approval process.

SEC. 9. Section 4848 of the Business and Professions Code is amended to read:

4848. (a) (1) The board shall, by means of examination, ascertain the professional qualifications of all applicants for licenses to practice veterinary medicine in this state and shall issue a license to every person whom it finds to be qualified. No license shall be issued to anyone who has not demonstrated his or her competency by examination.

(2) The examination shall consist of each of the following:

(A) A licensing examination that is administered on a national basis.

(B) A California state board examination.

(C) An examination concerning those statutes and regulations of the Veterinary Medicine Practice Act administered by the board. The examination shall be administered by mail and provided to applicants within 10 to 20 days of eligibility determination. The board shall have 10 to 20 days from the date of receipt to process the examination and

provide candidates with the results of the examination. The applicant shall certify that he or she personally completed the examination. Any false statement is a violation subject to Section 4831. University of California and Western University of Health Sciences veterinary medical students who have successfully completed a board approved course on veterinary law and ethics covering the Veterinary Medicine Practice Act shall be exempt from this provision.

(3) The examinations may be given at the same time or at different times as determined by the board. For examination purposes, the board may make contractual arrangements on a sole source basis with organizations furnishing examination material as it may deem desirable and shall be exempt from Section 10115 of the Public Contract Code.

(4) The licensing examination may be waived by the board in any case in which it determines that the applicant has taken and passed an examination for licensure in another state substantially equivalent in scope and subject matter to the licensing examination last given in California before the determination is made, and has achieved a score on the out-of-state examination at least equal to the score required to pass the licensing examination administered in California.

(5) Nothing in this chapter shall preclude the board from permitting a person who has completed a portion of his or her educational program, as determined by the board, in a veterinary college recognized by the board under Section 4846 to take any examination or any part thereof prior to satisfying the requirements for application for a license established by Section 4846.

(b) The board shall waive the examination requirements of subdivision (a), and issue a temporary license valid for one year to an applicant to practice veterinary medicine under the supervision of another licensed California veterinarian in good standing if the applicant meets all of the following requirements and would not be denied issuance of a license by any other provision of this code:

(1) The applicant holds a current valid license in good standing in another state, Canadian province, or United States territory and has practiced clinical veterinary medicine for a minimum of four years full time within the five years immediately preceding filing an application for licensure in this state. Experience obtained while participating in an American Veterinary Medical Association (AVMA) accredited institution's internship, residency, or specialty board training program shall be valid for meeting the minimum experience requirement.

The term ''in good standing'' means that an applicant under this section:

(A) Is not currently under investigation nor has been charged with an offense for any act substantially related to the practice of veterinary medicine by any public agency, nor entered into any consent agreement

or subject to an administrative decision that contains conditions placed by an agency upon an applicant's professional conduct or practice, including any voluntary surrender of license, nor been the subject of an adverse judgment resulting from the practice of veterinary medicine that the board determines constitutes evidence of a pattern of incompetence or negligence.

(B) Has no physical or mental impairment related to drugs or alcohol, and has not been found mentally incompetent by a physician so that the applicant is unable to undertake the practice of veterinary medicine in a manner consistent with the safety of a patient or the public.

(2) At the time of original licensure, the applicant passed the national licensing requirement in veterinary science with a passing score or scores on the examination or examinations equal to or greater than the passing score required to pass the national licensing examination or examinations administered in this state.

(3) The applicant has either graduated from a veterinary college recognized by the board under Section 4846 or possesses a certificate issued by the Educational Commission for Foreign Veterinary Graduates (ECFVG).

(4) The applicant passes an examination concerning the statutes and regulations of the Veterinary Medicine Practice Act, administered by the board, pursuant to subparagraph (C) of paragraph (2) of subdivision (a).

(5) The applicant agrees to complete an approved educational curriculum on regionally specific and important diseases and conditions during the period of temporary licensure. The board, in consultation with the California Veterinary Medical Association (CVMA), shall approve educational curricula that cover appropriate regionally specific and important diseases and conditions that are common in California. The curricula shall focus on small and large animal diseases consistent with the current proportion of small and large animal veterinarians practicing in the state. The approved curriculum shall not exceed 30 hours of educational time. The board shall approve a curriculum as soon as practical, but not later than June 1, 1999. The approved curriculum may be offered by multiple providers so that it is widely accessible to candidates licensed under this subdivision.

(c) Upon receipt of acknowledgment of successful completion of the requirements set forth in subdivision (b), the board shall issue a license to the applicant. Any applicant who does not meet the requirements of subdivision (b) shall take a California state board examination as specified in subparagraph (B) of paragraph (2) of subdivision (a).

(d) The board, in its discretion, may extend the expiration date of a temporary license issued pursuant to subdivision (b) for not more than one year for reasons of health, military service, or undue hardship. An

application for an extension shall be submitted on a form provided by the board.

SEC. 10. Section 4875.4 of the Business and Professions Code is amended to read:

4875.4. (a) The board shall, in the manner prescribed in Section 4808, adopt regulations covering the assessment of civil penalties under this article which give due consideration to the appropriateness of the penalty with respect to the following factors:

(1) The gravity of the violation.

(2) The good faith of the person being charged.

(3) The history of previous violations.

(b) In no event shall the civil penalty for each citation issued be assessed in an amount greater than five thousand dollars ($5,000).

(c) Regulations adopted by the board shall be pursuant to the procedures for citations and fines in accordance with Section 125.9.

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 468

An act to amend Sections 241.1, 387, and 11401 of, and to add Sections 241.2 and 366.5 to, the Welfare and Institutions Code, relating to the juvenile court.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 241.1 of the Welfare and Institutions Code is amended to read:

241.1. (a) Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both

departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. Any other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(b) The probation department and the child welfare services department in each county shall jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor described in subdivision (a), and the development of recommendations by these departments for consideration by the juvenile court. These protocols shall require, which requirements shall not be limited to, consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies which have been involved with the minor and his or her family. The protocols also shall contain provisions for resolution of disagreements between the probation and child welfare services departments regarding the need for dependency or ward status and provisions for determining the circumstances under which a new petition should be filed to change the minor's status.

(c) Whenever a minor who is under the jurisdiction of the juvenile court of a county pursuant to Section 300, 601, or 602 is alleged to come within the description of Section 300, 601, or 602 by another county, the county probation department or child welfare services department in the county that has jurisdiction under Section 300, 601, or 602 and the county probation department or child welfare services department of the county alleging the minor to be within one of those sections shall initially determine which status will best serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court in which the petition is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. In making their recommendation to the juvenile court, the departments shall conduct an assessment consistent with the requirements of subdivision (b). Any other juvenile court having jurisdiction over the minor shall receive notice from the court in which the petition is filed within five calendar days of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(d) Except as provided in subdivision (e), nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court.

(e) Notwithstanding the provisions of subdivision (d), the probation department and the child welfare services department, in consultation with the presiding judge of the juvenile court, in any county may create a jointly written protocol to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a dual status child, allowing the child to be simultaneously a dependent child and a ward of the court. This protocol shall be signed by the chief probation officer, the director of the county social services agency, and the presiding judge of the juvenile court prior to its implementation. No juvenile court may order that a child is simultaneously a dependent child and a ward of the court pursuant to this subdivision unless and until the required protocol has been created and entered into. This protocol shall include:

(1) A description of the process to be used to determine whether the child is eligible to be designated as a dual status child.

(2) A description of the procedure by which the probation department and the child welfare services department will assess the necessity for dual status for specified children and the process to make joint recommendations for the court's consideration prior to making a determination under this section. These recommendations shall ensure a seamless transition from wardship to dependency jurisdiction, as appropriate, so that services to the child are not disrupted upon termination of the wardship.

(3) A provision for ensuring communication between the judges who hear petitions concerning children for whom dependency jurisdiction has been suspended while they are within the jurisdiction of the juvenile court pursuant to Section 601 or 602. A judge may communicate by providing a copy of any reports filed pursuant to Section 727.2 concerning a ward to a court that has jurisdiction over dependency proceedings concerning the child.

(4) A plan to collect data in order to evaluate the protocol pursuant to Section 241.2.

(5) Counties that excercise the option provided for in this subdivision shall adopt either an ''on-hold'' system as described in subparagraph (A) or a ''lead court/lead agency'' system as described in subparagraph (B). In no case shall there be any simultaneous or duplicative case management or services provided by both the county probation department and the child welfare services department. It is the intent of the Legislature that judges, in cases in which more than one judge is involved, shall not issue conflicting orders.

(A) In counties in which an on-hold system is adopted, the dependency jurisdiction shall be suspended or put on hold while the child is subject to jurisdiction as a ward of the court. When it appears that termination of the court's jurisdiction, as established pursuant to Section 601 or 602, is likely and that reunification of the child with his or her parent or guardian would be detrimental to the child, the county probation department and the child welfare services department shall jointly assess and produce a recommendation for the court regarding whether the court's dependency jurisdiction shall be resumed.

(B) In counties in which a lead court/lead agency system is adopted, the protocol shall include a method for identifying which court or agency will be the lead court/lead agency. That court or agency shall be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports.

SEC. 2. Section 241.2 is added to the Welfare and Institutions Code, to read:

241.2. The Judicial Council shall collect and compile all of the data to be collected pursuant to paragraph (4) of subdivision (e) of Section 241.1 and shall prepare an evaluation of the results of the implementation of the protocol authorized in that subdivision for a representative sample of the counties that create a protocol pursuant to that provision. The Judicial Council shall report its findings and any resulting recommendations to the Legislature within two years of the date those counties first deem a child to be a dual status child. The Judicial Council shall review all proposed protocols to ensure that they provide for the collection of adequate, standardized data to perform these evaluations. In order to assist counties with data collection and evaluation, the Judicial Council may prepare model data collection and evaluation provisions that a county must include in their protocol.

SEC. 3. Section 366.5 is added to the Welfare and Institutions Code, to read:

366.5. The dependency jurisdiction shall be suspended for a child whom the juvenile court declares to be a dual status child based on the joint assessment and recommendation of the county probation department and the child welfare services department pursuant to subparagraph (A) of paragraph (5) of subdivision (e) of Section 241.1. The suspension shall be in effect while the child is a ward of the court. If the jurisdiction established pursuant to Section 601 or 602 is terminated without the need for continued dependency proceedings concerning the child, the juvenile court shall terminate the child's dual status. If the termination of the Section 601 or 602 jurisdiction is likely and reunification of the child with his or her parent or guardian would be detrimental to the child, the county probation department and child welfare services department shall jointly assess and produce a

recommendation regarding whether the court's dependency jurisdiction shall be resumed.

SEC. 4. Section 387 of the Welfare and Institutions Code is amended to read:

387. (a) An order changing or modifying a previous order by removing a child from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private or county institution, shall be made only after noticed hearing upon a supplemental petition.

(b) The supplemental petition shall be filed by the social worker in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child or, in the case of a placement with a relative, sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3.

(c) Notwithstanding subdivision (a), dependency jurisdiction shall be resumed for a child as to whom dependency jurisdiction has been suspended pursuant to Section 366.5 if the jurisdiction established pursuant to Section 601 or 602 is terminated and if, after the issuance of a joint assessment pursuant to Section 366.5, the court determines that the child's dependency jurisdiction should be resumed.

(d) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the social worker shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 290.1 and 291.

(e) An order for the detention of the child pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 7 (commencing with Section 305).

SEC. 5. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under the age of 18 years, except as provided in Section 11403, who meets the conditions of subdivision (a), (b), (c), (d), (e), or (f):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated after an action under the Family Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department, if responsible for placement and care, provides to those children all services as required by the department to children in foster care.

(b) The child has been removed from the physical custody of his or her parent, relative, or guardian as a result of a voluntary placement

agreement or a judicial determination that continuance in the home would be contrary to the child's welfare and that, if the child was placed in foster care, reasonable efforts were made, consistent with Chapter 5 (commencing with Section 16500) of Part 4, to prevent or eliminate the need for removal of the child from his or her home and to make it possible for the child to return to his or her home, and any of the following applies:

(1) The child has been adjudged a dependent child of the court on the grounds that he or she is a person described by Section 300.

(2) The child has been adjudged a ward of the court on the grounds that he or she is a person described by Sections 601 and 602.

(3) The child has been detained under a court order, pursuant to Section 319 or 636, that remains in effect.

(4) The child's dependency jurisdiction has resumed pursuant to Section 387.

(c) The child has been voluntarily placed by his or her parent or guardian pursuant to Section 11401.1.

(d) The child is living in the home of a nonrelated legal guardian.

(e) The child has been placed in foster care under the federal Indian Child Welfare Act. Sections 11402, 11404, and 11405 shall not be construed as limiting payments to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with that act.

(f) To be eligible for federal financial participation, all of the following conditions shall exist:

(1) The child meets the conditions of subdivision (b).

(2) The child has been deprived of parental support or care for any of the reasons set forth in Section 11250.

(3) The child has been removed from the home of a relative as defined in Section 233.90(c)(1) of Title 45 of the Code of Federal Regulations, as amended.

(4) The requirements of Sections 671 and 672 of Title 42 of the United States Code, as amended, have been met.

CHAPTER 469

An act to amend Section 130052 of the Public Utilities Code, relating to transportation.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 130052 of the Public Utilities Code is amended to read:

130052. The Orange County Transportation Commission shall be known as the Orange County Transportation Authority and shall be governed by a board of directors consisting of 18 members appointed as follows:

(a) Five members of the Orange County Board of Supervisors appointed by that board. Terms of office of the five members of the board of supervisors shall be determined by the board of supervisors. A board of supervisors member's term shall cease if he or she no longer serves as a member of the board of supervisors.

(b) (1) (A) Five city members, with one from each of the five supervisorial districts, elected by the Orange County City Selection Committee members within each supervisorial district on a population-weighted voting basis.

(B) Five city members, with one from each of the five supervisorial districts, elected on a ''one city, one vote'' basis by the Orange County City Selection Committee members within each supervisorial district.

(2) A city that is within more than one supervisorial district shall be considered part of the district where the highest percentage of the city's population resides. Under this circumstance, the entire city's population shall be used for population-weighted voting purposes. Each city member shall be a mayor or a city council member serving within the county. Terms of office of each city member shall be determined by the Orange County City Selection Committee. A city member's term shall cease if he or she no longer serves as a member of a city council or as the mayor of a city.

(3) A city member serving on the authority on the effective date of the act amending this section in the 2003–04 Regular Session shall continue to serve until the earliest of either the expiration of his or her term or until he or she no longer serves as a mayor or member of a city council.

(c) Two public members appointed by a majority vote of the other 15 voting members of the authority. Each public member shall be a resident of Orange County who is not then serving, and has not within the last four years served, as an elected official of a city within the county, as an elected official of any agency or special district within Orange County, or as an elected official of the county. Each public member shall serve for a term of four years.

(d) The Director of Transportation, District 12, who shall be appointed by the Governor as a nonvoting member. The member shall serve for a term of four years.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because a local agency or school district has the authority to levy service charges, fees, or assessments sufficient to pay for the program or level of service mandated by this act, within the meaning of Section 17556 of the Government Code.

CHAPTER 470

An act to amend Sections 17700, 53511, and 53601 of, and to add Section 6509.7 to, the Government Code, relating to local agency financing.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 6509.7 is added to the Government Code, to read:

6509.7. (a) Notwithstanding any other provision of law, two or more public agencies that have the authority to invest funds in their treasuries may, by agreement, jointly exercise that common power. Funds invested pursuant to an agreement entered into under this section may be invested as authorized by subdivision (o) of Section 53601. A joint powers authority formed pursuant to this section may issue shares of beneficial interest to participating public agencies. Each share shall represent an equal proportionate interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares of beneficial interest shall have retained an investment adviser that meets all of the following criteria:

(1) The adviser is registered or exempt from registration with the Securities and Exchange Commission.

(2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (n), inclusive, of Section 53601.

(3) The adviser has assets under management in excess of five hundred million dollars ($500,000,000).

(b) As used in this section, ''public agency'' includes a nonprofit corporation whose membership is confined to public agencies or public officials, in addition to those agencies listed in Section 6500.

SEC. 2. Section 17700 of the Government Code is amended to read:

17700. (a) The state or any state board, department, agency, or authority, including, but not limited to, the State Public Works Board, may bring an action to determine the validity of its bonds, warrants, contracts, obligations, or evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(b) (1) Any state board, department, agency, or authority that issues bonds, notes, or other obligations the proceeds of which are to be used to purchase, or to make loans evidenced or secured by, the bonds, warrants, contracts, obligations, or evidences of indebtedness of one or more local agencies, may bring an action to determine the validity of the bonds, warrants, contracts, obligations, or evidences of indebtedness of those local agencies to be purchased by, or used to evidence or secure loans by, the state board, department, agency, or authority, pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(2) For purposes of this subdivision, ''local agency'' shall have the same meaning as set forth in Section 53510.

(c) For the purposes of Section 860 of the Code of Civil Procedure, any action initiated pursuant to this section shall be brought in the Superior Court of the County of Sacramento.

SEC. 3. Section 53511 of the Government Code is amended to read:

53511. (a) A local agency may bring an action to determine the validity of its bonds, warrants, contracts, obligations or evidences of indebtedness pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

(b) A local agency that issues bonds, notes, or other obligations the proceeds of which are to be used to purchase, or to make loans evidenced or secured by, the bonds, warrants, contracts, obligations, or evidences of indebtedness of other local agencies, may bring a single action in the superior court of the county in which that local agency is located to determine the validity of the bonds, warrants, contracts, obligations, or evidences of indebtedness of the other local agencies, pursuant to Chapter 9 (commencing with Section 860) of Title 10 of Part 2 of the Code of Civil Procedure.

SEC. 4. Section 53601 of the Government Code is amended to read:

53601. This section shall apply to a local agency that is a city, a district, or other local agency that does not pool money in deposits or investments with other local agencies, other than local agencies that have the same governing body. However, Section 53635 shall apply to all local agencies that pool money in deposits or investments with other local agencies that have separate governing bodies. The legislative body of a local agency having money in a sinking fund or money in its treasury not required for the immediate needs of the local agency may invest any

portion of the money that it deems wise or expedient in those investments set forth below. A local agency purchasing or obtaining any securities prescribed in this section, in a negotiable, bearer, registered, or nonregistered format, shall require delivery of the securities to the local agency, including those purchased for the agency by financial advisers, consultants, or managers using the agency's funds, by book entry, physical delivery, or by third-party custodial agreement. The transfer of securities to the counterparty bank's customer book entry account may be used for book entry delivery.

For purposes of this section, ''counterparty'' means the other party to the transaction. A counterparty bank's trust department or separate safekeeping department may be used for the physical delivery of the security if the security is held in the name of the local agency. Where this section specifies a percentage limitation for a particular category of investment, that percentage is applicable only at the date of purchase. Where this section does not specify a limitation on the term or remaining maturity at the time of the investment, no investment shall be made in any security, other than a security underlying a repurchase or reverse repurchase agreement or securities lending agreement authorized by this section, that at the time of the investment has a term remaining to maturity in excess of five years, unless the legislative body has granted express authority to make that investment either specifically or as a part of an investment program approved by the legislative body no less than three months prior to the investment:

(a) Bonds issued by the local agency, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency or by a department, board, agency, or authority of the local agency.

(b) United States Treasury notes, bonds, bills, or certificates of indebtedness, or those for which the faith and credit of the United States are pledged for the payment of principal and interest.

(c) Registered state warrants or treasury notes or bonds of this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the state or by a department, board, agency, or authority of the state.

(d) Bonds, notes, warrants, or other evidences of indebtedness of any local agency within this state, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by the local agency, or by a department, board, agency, or authority of the local agency.

(e) Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

(f) Bankers acceptances otherwise known as bills of exchange or time drafts that are drawn on and accepted by a commercial bank. Purchases of bankers acceptances may not exceed 180 days' maturity or 40 percent of the agency's money that may be invested pursuant to this section. However, no more than 30 percent of the agency's money may be invested in the bankers acceptances of any one commercial bank pursuant to this section.

This subdivision does not preclude a municipal utility district from investing any money in its treasury in any manner authorized by the Municipal Utility District Act (Division 6 (commencing with Section 11501) of the Public Utilities Code).

(g) Commercial paper of ''prime'' quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions in either paragraph (1) or paragraph (2):

(1) The entity meets the following criteria:

(A) Is organized and operating in the United States as a general corporation.

(B) Has total assets in excess of five hundred million dollars ($500,000,000).

(C) Has debt other than commercial paper, if any, that is rated ''A'' or higher by a nationally recognized statistical-rating organization (NRSRO).

(2) The entity meets the following criteria:

(A) Is organized within the United States as a special purpose corporation, trust, or limited liability company.

(B) Has programwide credit enhancements including, but not limited to, overcollateralization, letters of credit, or surety bond.

(C) Has commercial paper that is rated ''A-1'' or higher, or the equivalent, by a nationally recognized statistical-rating organization (NRSRO).

Eligible commercial paper shall have a maximum maturity of 270 days or less. Local agencies, other than counties or a city and county, may invest no more than 25 percent of their money in eligible commercial paper. Local agencies, other than counties or a city and county, may purchase no more than 10 percent of the outstanding commercial paper of any single issuer. Counties or a city and county may invest in commercial paper pursuant to the concentration limits in subdivision (a) of Section 53635.

(h) Negotiable certificates of deposit issued by a nationally or state-chartered bank, a savings association or a federal association (as defined by Section 5102 of the Financial Code), a state or federal credit union, or by a state-licensed branch of a foreign bank. Purchases of

negotiable certificates of deposit may not exceed 30 percent of the agency's money which may be invested pursuant to this section. For purposes of this section, negotiable certificates of deposit do not come within Article 2 (commencing with Section 53630), except that the amount so invested shall be subject to the limitations of Section 53638. The legislative body of a local agency and the treasurer or other official of the local agency having legal custody of the money are prohibited from investing local agency funds, or funds in the custody of the local agency, in negotiable certificates of deposit issued by a state or federal credit union if a member of the legislative body of the local agency, or any person with investment decisionmaking authority in the administrative office manager's office, budget office, auditor-controller's office, or treasurer's office of the local agency also serves on the board of directors, or any committee appointed by the board of directors, or the credit committee or the supervisory committee of the state or federal credit union issuing the negotiable certificates of deposit.

(i) (1) Investments in repurchase agreements or reverse repurchase agreements or securities lending agreements of any securities authorized by this section, as long as the agreements are subject to this subdivision, including the delivery requirements specified in this section.

(2) Investments in repurchase agreements may be made, on any investment authorized in this section, when the term of the agreement does not exceed one year. The market value of securities that underlay a repurchase agreement shall be valued at 102 percent or greater of the funds borrowed against those securities and the value shall be adjusted no less than quarterly. Since the market value of the underlying securities is subject to daily market fluctuations, the investments in repurchase agreements shall be in compliance if the value of the underlying securities is brought back up to 102 percent no later than the next business day.

(3) Reverse repurchase agreements or securities lending agreements may be utilized only when all of the following conditions are met:

(A) The security to be sold on reverse repurchase agreement or securities lending agreement has been owned and fully paid for by the local agency for a minimum of 30 days prior to sale.

(B) The total of all reverse repurchase agreements and securities lending agreements on investments owned by the local agency does not exceed 20 percent of the base value of the portfolio.

(C) The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(D) Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty by way of a reverse repurchase agreement or securities lending agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement or securities lending agreement, unless the reverse repurchase agreement or securities lending agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement or securities lending agreement and the final maturity date of the same security.

(4) (A) Investments in reverse repurchase agreements, securities lending agreements, or similar investments in which the local agency sells securities prior to purchase with a simultaneous agreement to repurchase the security may only be made upon prior approval of the governing body of the local agency and shall only be made with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency.

(B) For purposes of this chapter, ''significant banking relationship'' means any of the following activities of a bank:

(i) Involvement in the creation, sale, purchase, or retirement of a local agency's bonds, warrants, notes, or other evidence of indebtedness.

(ii) Financing of a local agency's activities.

(iii) Acceptance of a local agency's securities or funds as deposits.

(5) (A) ''Repurchase agreement'' means a purchase of securities by the local agency pursuant to an agreement by which the counterparty seller will repurchase the securities on or before a specified date and for a specified amount and the counterparty will deliver the underlying securities to the local agency by book entry, physical delivery, or by third-party custodial agreement. The transfer of underlying securities to the counterparty bank's customer book-entry account may be used for book-entry delivery.

(B) ''Securities,'' for purpose of repurchase under this subdivision, means securities of the same issuer, description, issue date, and maturity.

(C) ''Reverse repurchase agreement'' means a sale of securities by the local agency pursuant to an agreement by which the local agency will repurchase the securities on or before a specified date and includes other comparable agreements.

(D) ''Securities lending agreement'' means an agreement under which a local agency agrees to transfer securities to a borrower who, in turn, agrees to provide collateral to the local agency. During the term of the agreement, both the securities and the collateral are held by a third party. At the conclusion of the agreement, the securities are transferred back to the local agency in return for the collateral.

(E) For purposes of this section, the base value of the local agency's pool portfolio shall be that dollar amount obtained by totaling all cash balances placed in the pool by all pool participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

(F) For purposes of this section, the spread is the difference between the cost of funds obtained using the reverse repurchase agreement and the earnings obtained on the reinvestment of the funds.

(j) Medium-term notes, defined as all corporate and depository institution debt securities with a maximum remaining maturity of five years or less, issued by corporations organized and operating within the United States or by depository institutions licensed by the United States or any state and operating within the United States. Notes eligible for investment under this subdivision shall be rated ''A'' or better by a nationally recognized rating service. Purchases of medium-term notes shall not include other instruments authorized by this section and may not exceed 30 percent of the agency's money that may be invested pursuant to this section.

(k) (1) Shares of beneficial interest issued by diversified management companies that invest in the securities and obligations as authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n) and that comply with the investment restrictions of this article and Article 2 (commencing with Section 53630). However, notwithstanding these restrictions, a counterparty to a reverse repurchase agreement or securities lending agreement is not required to be a primary dealer of the Federal Reserve Bank of New York if the company's board of directors finds that the counterparty presents a minimal risk of default, and the value of the securities underlying a repurchase agreement or securities lending agreement may be 100 percent of the sales price if the securities are marked to market daily.

(2) Shares of beneficial interest issued by diversified management companies that are money market funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. Sec. 80a-1 et seq.).

(3) If investment is in shares issued pursuant to paragraph (1), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience investing in the securities and obligations authorized by subdivisions (a) to (j), inclusive, or subdivisions (m) or (n)

and with assets under management in excess of five hundred million dollars ($500,000,000).

(4) If investment is in shares issued pursuant to paragraph (2), the company shall have met either of the following criteria:

(A) Attained the highest ranking or the highest letter and numerical rating provided by not less than two nationally recognized statistical rating organizations.

(B) Retained an investment adviser registered or exempt from registration with the Securities and Exchange Commission with not less than five years' experience managing money market mutual funds with assets under management in excess of five hundred million dollars ($500,000,000).

(5) The purchase price of shares of beneficial interest purchased pursuant to this subdivision shall not include any commission that the companies may charge and shall not exceed 20 percent of the agency's money that may be invested pursuant to this section. However, no more than 10 percent of the agency's funds may be invested in shares of beneficial interest of any one mutual fund pursuant to paragraph (1).

(*l*) Moneys held by a trustee or fiscal agent and pledged to the payment or security of bonds or other indebtedness, or obligations under a lease, installment sale, or other agreement of a local agency, or certificates of participation in those bonds, indebtedness, or lease installment sale, or other agreements, may be invested in accordance with the statutory provisions governing the issuance of those bonds, indebtedness, or lease installment sale, or other agreement, or to the extent not inconsistent therewith or if there are no specific statutory provisions, in accordance with the ordinance, resolution, indenture, or agreement of the local agency providing for the issuance.

(m) Notes, bonds, or other obligations that are at all times secured by a valid first priority security interest in securities of the types listed by Section 53651 as eligible securities for the purpose of securing local agency deposits having a market value at least equal to that required by Section 53652 for the purpose of securing local agency deposits. The securities serving as collateral shall be placed by delivery or book entry into the custody of a trust company or the trust department of a bank that is not affiliated with the issuer of the secured obligation, and the security interest shall be perfected in accordance with the requirements of the Uniform Commercial Code or federal regulations applicable to the types of securities in which the security interest is granted.

(n) Any mortgage passthrough security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-backed certificate, consumer receivable passthrough certificate, or consumer receivable-backed bond of a maximum of five years' maturity. Securities eligible for investment under this subdivision shall be issued

by an issuer having an ''A'' or higher rating for the issuer's debt as provided by a nationally recognized rating service and rated in a rating category of ''AA'' or its equivalent or better by a nationally recognized rating service. Purchase of securities authorized by this subdivision may not exceed 20 percent of the agency's surplus money that may be invested pursuant to this section.

(o) Shares of beneficial interest issued by a joint powers authority organized pursuant to Section 6509.7 that invests in the securities and obligations authorized in subdivisions (a) to (n), inclusive. Each share shall represent an equal proportional interest in the underlying pool of securities owned by the joint powers authority. To be eligible under this section, the joint powers authority issuing the shares shall have retained an investment adviser that meets all of the following criteria:

(1) The adviser is registered or exempt from registration with the Securities and Exchange Commission.

(2) The adviser has not less than five years of experience investing in the securities and obligations authorized in subdivisions (a) to (n), inclusive.

(3) The adviser has assets under management in excess of five hundred million dollars ($500,000,000).

CHAPTER 471

An act to amend, repeal, and add Sections 56030, 56700, and 56886.5 of, and to add and repeal Section 56826.5 of, the Government Code, relating to local government reorganization.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 56030 of the Government Code is amended to read:

56030. ''Consolidation'' means the uniting or joining of two or more cities located in the same county into a single new successor city or two or more districts into a single new successor district.

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.

SEC. 1.5. Section 56030 is added to the Government Code, to read:

56030. (a) ''Consolidation'' means the uniting or joining of two or more cities located in the same county into a single new successor city or two or more districts into a single new successor district. In the case of consolidation of special districts, all of those districts shall have been formed pursuant to the same principal act.

(b) This section shall become operative on July 1, 2008.

SEC. 2. Section 56700 of the Government Code is amended to read:

56700. (a) A proposal for a change of organization or a reorganization may be made by petition. The petition shall do all of the following:

(1) State that the proposal is made pursuant to this part.

(2) State the nature of the proposal and list all proposed changes of organization.

(3) Set forth a description of the boundaries of affected territory accompanied by a map showing the boundaries.

(4) Set forth any proposed terms and conditions.

(5) State the reason or reasons for the proposal.

(6) State whether the petition is signed by registered voters or owners of land.

(7) Designate not to exceed three persons as chief petitioners, setting forth their names and mailing addresses.

(8) Request that proceedings be taken for the proposal pursuant to this part.

(9) State whether the proposal is consistent with the sphere of influence of any affected city or affected district.

(b) A petition for a proposal for a change of organization or a reorganization that includes the consolidation of two or more special districts not formed pursuant to the same principal act, in addition to the requirements set forth in subdivision (a), shall do either of the following:

(1) Designate the district that shall be the successor and specify under which principal act the successor shall conduct itself.

(2) State that the proposal requires the formation of a new district and includes a plan for services prepared pursuant to Section 56653.

(c) 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.

SEC. 2.5. Section 56700 is added to the Government Code, to read:

56700. (a) A proposal for a change of organization or a reorganization may be made by petition. The petition shall do all of the following:

(1) State that the proposal is made pursuant to this part.

(2) State the nature of the proposal and list all proposed changes of organization.

(3) Set forth a description of the boundaries of affected territory accompanied by a map showing the boundaries.

(4) Set forth any proposed terms and conditions.

(5) State the reason or reasons for the proposal.

(6) State whether the petition is signed by registered voters or owners of land.

(7) Designate not to exceed three persons as chief petitioners, setting forth their names and mailing addresses.

(8) Request that proceedings be taken for the proposal pursuant to this part.

(9) State whether the proposal is consistent with the sphere of influence of any affected city or affected district.

(b) This section shall become operative on July 1, 2008.

SEC. 3. Section 56826.5 is added to the Government Code, to read:

56826.5. (a) A proposal for reorganization that includes the consolidation of two or more special districts not formed pursuant to the same principal act shall only be approved by the commission if both the following conditions are met:

(1) The commission is able to designate a successor or successors, or form a new district or districts, authorized by their respective principal acts to deliver all of the services provided by the consolidating districts at the time of consolidation.

(2) The commission makes the determinations specified in subdivision (b) of Section 56881.

(b) If a proposal for reorganization that includes the consolidation of two or more special districts not formed pursuant to the same principal act is initiated by the commission pursuant to subdivision (a) of Section 56375, it shall only be approved if the commission has prepared a study pursuant to Section 56378 or the written statement of determinations specified in subdivision (a) of Section 56430, and all of the following conditions are met:

(1) Each of the services provided by the districts subject to the proposal will be provided by a successor or successors, or by the formation of a new district authorized under a principal act to deliver the services. The commission may designate a successor other than the districts subject to the proposal only if the successor is currently providing the same service provided by one or more of the districts subject to the proposal. The commission shall not designate a city as a successor unless the city contains 70 percent or more of the area of land within one of the districts subject to the proposal, or the combined territory of two or more of the districts subject to the proposal, within its boundaries, and 70 percent or more of the number of registered voters of the district or the combined districts who reside within the boundaries of the city.

(2) The public services costs of the proposal that the commission is authorizing are likely to be less than or substantially similar to the costs of alternative means of providing the service.

(3) The proposal that the commission is approving promotes public access and accountability for community services needs and financial resources.

(c) 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.

SEC. 4. Section 56886.5 of the Government Code is amended to read:

56886.5. (a) If a proposal includes the formation of a district or the incorporation of a city, the commission shall determine whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose local agency is deemed necessary, the commission shall consider reorganization with other single-purpose local agencies that provide related services.

(b) If a proposal includes the consolidation of two or more special districts not formed pursuant to the same principal act, the commission shall determine whether any service provided at that time could be discontinued due to a lack of authority under the principal act of the successor. If a new single-purpose local agency is deemed necessary to provide the needed service or services, the commission shall consider the formation of a new district that is authorized to provide the service or services.

(c) 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.

SEC. 5.5. Section 56886.5 is added to the Government Code, to read:

56886.5. (a) If a proposal includes the formation of a district or the incorporation of a city, the commission shall determine whether existing agencies can feasibly provide the needed service or services in a more efficient and accountable manner. If a new single-purpose local agency is deemed necessary, the commission shall consider reorganization with other single-purpose local agencies that provide related services.

(b) This section shall become operative on July 1, 2008.

CHAPTER 472

An act to amend Sections 2030, 2031, 6340, 6341, and 6344 of, and to add Sections 3121 and 7605 to, the Family Code, relating to family law.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 2030 of the Family Code is amended to read:

2030. (a) (1) In a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a governmental entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(2) Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon, (A) the respective incomes and needs of the parties, and (B) any factors affecting the parties' respective abilities to pay. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(b) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(c) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of the proceeding, or any proceeding related thereto, including after any appeal has been concluded.

(d) Any order requiring a party who is not the spouse of another party to the proceeding to pay attorney's fees or costs shall be limited to an amount reasonably necessary to maintain or defend the action on the issues relating to that party.

SEC. 2. Section 2031 of the Family Code is amended to read:

2031. (a) (1) Except as provided in subdivision (b), during the pendency of a proceeding for dissolution of marriage, for nullity of marriage, for legal separation of the parties, or any proceeding

subsequent to entry of a related judgment, an application for a temporary order making, augmenting, or modifying an award of attorney's fees, including a reasonable retainer to hire an attorney, or costs or both shall be made by motion on notice or by an order to show cause.

(2) The court shall rule on an application within 15 days of the hearing on the motion or order to show cause.

(b) An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made pursuant to this subdivision within 15 days and prior to the entry of any judgment.

SEC. 3. Section 3121 is added to the Family Code, to read:

3121. (a) In any proceeding pursuant to Section 3120, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a government entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(b) Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon (1) the respective incomes and needs of the parties, and (2) any factors affecting the parties' respective abilities to pay. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(c) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(d) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of a proceeding described in Section 3120, or any proceeding related thereto, including after any appeal has been concluded.

(e) Except as provided in paragraph (g), an application for a temporary order making, augmenting, or modifying an award of attorney's fees, including a reasonable retainer to hire an attorney, or costs, or both, shall be made by motion on notice or by an order to show cause during the pendency of any proceeding described in Section 3120.

(f) The court shall rule on an application for fees under this section within 15 days of the hearing on the motion or order to show cause. An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made pursuant to this subdivision within 15 days and prior to the entry of any judgment.

SEC. 4. Section 6340 of the Family Code is amended to read:

6340. (a) The court may issue any of the orders described in Article 1 (commencing with Section 6320) after notice and a hearing. When determining whether to make any orders under this subdivision, the court shall consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom the custody or visitation orders are sought. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(b) The court may issue an order described in Section 6321 excluding a person from a dwelling if the court finds that physical or emotional harm would otherwise result to the other party, to a person under the care, custody, and control of the other party, or to a minor child of the parties or of the other party.

SEC. 5. Section 6341 of the Family Code is amended to read:

6341. (a) If the parties are married to each other and no other child support order exists or if there is a presumption under Section 7611 that the respondent is the natural father of a minor child and the child is in the custody of the petitioner, after notice and a hearing, the court may, if requested by the petitioner, order a party to pay an amount necessary for the support and maintenance of the child if the order would otherwise be authorized in an action brought pursuant to Division 9 (commencing with Section 3500) or the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12). When determining whether to make any orders under this subdivision, the court shall consider whether failure to make any of these orders may jeopardize the safety of the petitioner and the children for whom child support is requested, including safety concerns related to the financial needs of the petitioner and the children. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(b) An order issued pursuant to subdivision (a) of this section shall be without prejudice in an action brought pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12).

(c) If the parties are married to each other and no spousal support order exists, after notice and a hearing, the court may order the

respondent to pay spousal support in an amount, if any, that would otherwise by authorized in an action pursuant to Part 1 (commencing with Section 3500) or Part 3 (commencing with Section 4300) of Division 9. When determining whether to make any orders under this subdivision, the court shall consider whether failure to make any of these orders may jeopardize the safety of the petitioner, including safety concerns related to the financial needs of the petitioner. The Judicial Council shall provide notice of this provision on any Judicial Council forms related to this subdivision.

(d) An order issued pursuant to subdivision (c) shall be without prejudice in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties.

SEC. 6. Section 6344 of the Family Code is amended to read:

6344. (a) After notice and a hearing, the court may issue an order for the payment of attorney's fees and costs of the prevailing party.

(b) In any action in which the petitioner is the prevailing party and cannot afford to pay for the attorney's fees and costs, the court shall, if appropriate based on the parties' respective abilities to pay, order that the respondent pay petitioner's attorney's fees and costs for commencing and maintaining the proceeding. Whether the respondent shall be ordered to pay attorney's fees and costs for the prevailing petitioner, and what amount shall be paid, shall be determined based upon (1) the respective incomes and needs of the parties, and (2) any factors affecting the parties' respective abilities to pay.

SEC. 7. Section 7605 is added to the Family Code, to read:

7605. (a) In any proceeding to establish physical or legal custody of a child or a visitation order under this part, and in any proceeding subsequent to entry of a related judgment, the court shall ensure that each party has access to legal representation to preserve each party's rights by ordering, if necessary based on the income and needs assessments, one party, except a government entity, to pay to the other party, or to the other party's attorney, whatever amount is reasonably necessary for attorney's fees and for the cost of maintaining or defending the proceeding during the pendency of the proceeding.

(b) Whether one party shall be ordered to pay attorney's fees and costs for another party, and what amount shall be paid, shall be determined based upon (1) the respective incomes and needs of the parties, and (2) any factors affecting the parties' respective abilities to pay. A party who lacks the financial ability to hire an attorney may request, as an in pro per litigant, that the court order the other party, if that other party has the financial ability, to pay a reasonable amount to allow the unrepresented party to retain an attorney in a timely manner before proceedings in the matter go forward.

(c) Attorney's fees and costs within this section may be awarded for legal services rendered or costs incurred before or after the commencement of the proceeding.

(d) The court shall augment or modify the original award for attorney's fees and costs as may be reasonably necessary for the prosecution or defense of a proceeding described in subdivision (a), or any proceeding related thereto, including after any appeal has been concluded.

(e) Except as provided in paragraph (g), an application for a temporary order making, augmenting, or modifying an award of attorney's fees, including a reasonable retainer to hire an attorney, or costs, or both, shall be made by motion on notice or by an order to show cause during the pendency of any proceeding described in subdivision (a).

(f) The court shall rule on an application for fees under this section within 15 days of the hearing on the motion or order to show cause. An order described in subdivision (a) may be made without notice by an oral motion in open court at either of the following times:

(1) At the time of the hearing of the cause on the merits.

(2) At any time before entry of judgment against a party whose default has been entered pursuant to Section 585 or 586 of the Code of Civil Procedure. The court shall rule on any motion made pursuant to this subdivision within 15 days and prior to the entry of any judgment.

CHAPTER 473

An act to add Article 2.5 (commencing with Section 17975) to Chapter 5 of Part 1.5 of Division 13 of, to repeal Chapter 6.1 (commencing with Section 50651) of Part 2 of Division 31 of, and to amend Sections 33334.22, 50781, and 50784 of, the Health and Safety Code, relating to housing, and making an appropriation therefor.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Article 2.5 (commencing with Section 17975) is added to Chapter 5 of Part 1.5 of Division 13 of the Health and Safety Code, to read:

Article 2.5. Tenant Relocation Assistance

17975. Any tenant who is displaced or subject to displacement from a residential rental unit as a result of an order to vacate or an order requiring the vacation of a residential unit by a local enforcement agency as a result of a violation so extensive and of such a nature that the immediate health and safety of the residents is endangered, shall be entitled to receive relocation benefits from the owner as specified in this article. The local enforcement agency shall determine the eligibility of tenants for benefits pursuant to this article.

17975.1. (a) The relocation benefits required by this article shall be paid by the owner or designated agent to the tenant within 10 days after the date that the order to vacate is first mailed to the owner and posted on the premises, or at least 20 days prior to the vacation date set forth in the order to vacate, whichever occurs later.

(b) If there are fewer than 10 days between the first posting and mailing of the order to vacate and the vacation date, the relocation benefits shall be paid by the owner or designated agent to the tenant within 24 hours after the notice is posted and mailed. The local enforcement agency shall attempt to provide telephonic or written notice to the owner to notify the owner that the benefits are payable immediately. Failure to provide the notice as specified in this section shall not relieve the owner of any obligations imposed by this article.

(c) If a tenant is entitled to relocation benefits pursuant to Section 17975, the local enforcement agency shall provide either telephonic or written notice to the tenant of his or her entitlement to the benefits. Written notice may be satisfied by posting a written notice on the premises stating that tenants may be entitled to relocation benefits.

17975.2. The relocation payment shall be made available by the owner or designated agent to the tenant in each residential unit and shall be a sum equal to two months of the established fair market rent for the area as determined by the Department of Housing and Urban Development pursuant to Section 1437f of Title 42 of the United States Code.In addition, the relocation payment shall include an amount, as determined by the local enforcement agency, sufficient for utility service deposits. The relocation benefits shall be paid by the owner or designated agent in addition to the return, as required by law, of any security deposits held by the owner. The relocation benefits shall be payable on a per residential unit basis.

17975.3. (a) Any owner or designated agent who does not make timely payment as specified in Section 17975.1 shall be liable to the tenant for an amount equal to $1^1/_2$ times the relocation benefits payable pursuant to Section 17975.2.

(b) Subdivision (a) shall not apply when relocation benefits are payable fewer than 10 days after the date the order to vacate is first mailed and posted on the premises, if the owner or designated agent makes the payment no later than 10 days after the order is first mailed and posted.

17975.4. (a) No relocation benefits pursuant to this article shall be payable to any tenant who has caused or substantially contributed to the condition giving rise to the order to vacate, as determined by the local enforcement agency, nor shall any relocation benefits be payable to a tenant if any guest or invitee of the tenant has caused or substantially contributed to the condition giving rise to the order to vacate, as determined by the local enforcement agency. The local enforcement agency shall make the determination whether a tenant, tenant's guest, or invitee caused or substantially contributed to the condition, giving rise to the order to vacate at the same time that the order to vacate the tenants is made.

(b) An owner or designated agent shall not be liable for relocation benefits if the local enforcement agency determines that the unit or structure became unsafe or hazardous as the result of a fire, flood, earthquake, or other event beyond the control of the owner or the designated agent and the owner or designated agent did not cause or contribute to the condition.

(c) In the situations described in subdivisions (a) and (b), the tenants of units within a multiunit structure who did not cause or substantially contribute to the uninhabitable condition shall be eligible for relocation benefits from the local enforcement agency that elects at its discretion to pay relocation payments in accordance with Section 17975.2 to those tenants.

(d) An owner or designated agent shall not be liable to make any payment as prescribed by this section if the local enforcement agency does not provide for an appeals process for the order to pay relocation benefits.

17975.5. (a) If the owner or designated agent fails, neglects, or refuses to pay relocation payments to a displaced tenant or a tenant subject to displacement, except in the situations described in Section 17975.4, the local enforcement agency may advance relocation payments as specified in Section 17975.2. If the local enforcement agency, pursuant to locally adopted policies, offers to advance relocation payments in accordance with Section 17975.2, the local enforcement agency shall be entitled to recover from the owner any amount paid to a tenant pursuant to this section except payments made pursuant to subdivision (c) of Section 17975.4. The local enforcement agency shall also be entitled to recover from the owner or designated agent an additional amount equal to the sum of one-half the amount so paid, but

not to exceed ten thousand dollars ($10,000), as a penalty for failure to make timely payment to the displaced tenant, and the local enforcement agency's actual costs, including direct and indirect costs, of administering the provision of benefits to the displaced tenant.

(b) Any amounts paid by the local enforcement agency, except pursuant to subdivision (c) of Section 17975.4, and any applicable penalties and actual costs may also be placed as a lien against the property by the local enforcement agency by recording the lien in the county recorder's office of the county in which the real property is located.

(c) Any local enforcement agency that elects, at its own option pursuant to subdivision (a), to advance relocation payments to displaced tenants when the owner or designated agent fails, neglects, or refuses to pay relocation payments to displaced tenants, shall prior to instituting any action to collect from the owner or designated agent relocation benefits paid pursuant to this section, or to impose a lien therefor, send to the owner or designated agent by first-class mail, postage prepaid, at the owner's address as shown on the last equalized assessment roll, an itemized accounting of all benefits paid by the local enforcement agency to the owner's tenants, and any penalties or costs the local enforcement agency is seeking to recover as authorized pursuant to subdivision (a). If the owner or designated agent contends that not all of the benefits are chargeable to the owner or designated agent because the recipients were not displaced tenants, no benefits were payable pursuant to Section 17975.4, or on other grounds, the owner or designated agent shall submit a written appeal to the director of the local enforcement agency within 20 days after receipt by the owner or designated agent of the itemized accounting. The director, or the director's designee, shall hold an administrative hearing for the purpose of determining the amount of benefits paid that are chargeable to the owner or designated agent, and any penalties or costs the local enforcement agency may recover pursuant to subdivision (a). The local enforcement agency shall provide an administrative appeal process for any appeal of a decision of the director or the director's designee. The final decision of the local appellate body shall be subject to Section 1094.5 of the Code of Civil Procedure. If the owner fails to obtain a more favorable decision than that set forth in the itemized accounting, the owner or designated agent shall be liable to the local enforcement agency for the costs of the administrative hearing and appeal, not to exceed five thousand dollars ($5,000). The failure to receive the itemized accounting shall not relieve the owner of any obligation to the city or county.

(d) Nothing in this article shall be construed to require the local enforcement agency to pay any relocation benefits to any tenant, or

assume any obligation, requirement, or duty of the owner pursuant to this article.

17975.6. Notwithstanding subdivision (b) of Section 17975.1 and subdivision (a) of Section 17975.5, if there are fewer than 10 days between the first posting and mailing of the order to vacate and the vacation date, and if the local enforcement agency advances relocation benefits to any tenants, prior to the expiration of the 10-day period, the owner shall not be required to reimburse the local enforcement agency for a charge identified on the itemized accounting described in subdivision (c) of Section 17975.5 if the owner contests the charge within 30 days after the itemized accounting is mailed to the owner or designated agent pursuant to subdivision (c) of Section 17975.5. The owner or designated agent shall pay the charge that was the subject of the appeal pursuant to subdivision (c) of Section 17975.5 within 30 days after an adverse decision by the director of the local enforcement agency on the appeal is mailed to the owner.

17975.7. The remedies under this article are cumulative and in addition to any other remedies available under federal, state, or local law.

17975.8. Any order by a local agency that requires a tenant's displacement and is issued to an owner, designated agent, or tenant, shall be accompanied by a summary of the provisions of this article. Failure to provide a summary shall not relieve any person of the obligations imposed by this article.

17975.9. While it is the intent of the Legislature in enacting this article to provide an expedient means by which to provide relocation funds to tenants, nothing in this article shall be construed to limit the rights available to owners, designated agents, or tenants under any other provision of law. Furthermore, nothing in this article shall be construed to deprive an owner of procedural due process rights guaranteed by law, including, but not limited to, a right to file a judicial action against a local enforcement agency that has failed to proceed in a manner required by law.

17975.10. When seeking reimbursement under an optional local program intended to advance relocation payments to displaced tenants when the owner fails, neglects, or refuses to pay relocation payments to displaced tenants pursuant to the provisions of this article, the local code enforcement agency shall first explore the potential of using funds from any available federally funded program that provides tenant relocation assistance in cases of local code enforcement activities.

SEC. 2. Section 33334.22 of the Health and Safety Code is amended to read:

33334.22. (a) The Legislature finds and declares that in order to avoid serious economic hardships and accompanying blight, it is necessary to enact this section, which shall apply only within Santa Cruz

County, and which is enacted for the purpose of providing housing assistance to very low, lower, and moderate-income households.

(b) Notwithstanding Section 50052.5, any redevelopment agency within Santa Cruz County may make assistance available from its low- and moderate-income housing fund directly to a homebuyer for the purchase of an owner-occupied home, and for purposes of that assistance and this section, ''affordable housing cost'' shall not exceed the following:

(1) For very low income households, the product of 40 percent times 50 percent of the area median income adjusted for family size appropriate for the unit.

(2) For lower income households whose gross incomes exceed the maximum income for very low income households and do not exceed 70 percent of the area median income adjusted for family size, the product of 40 percent times 70 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any lower income household that has a gross income that equals or exceeds 70 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that the affordable housing cost not exceed 40 percent of the gross income of the household.

(3) For moderate income households, affordable housing cost shall not exceed the product of 40 percent times 110 percent of the area median income adjusted for family size appropriate for the unit. In addition, for any moderate-income household that has a gross income that exceeds 110 percent of the area median income adjusted for family size, it shall be optional for any state or local funding agency to require that affordable housing cost not exceed 40 percent of the gross income of the household.

(c) Any agency in Santa Cruz County that provides assistance pursuant to this section shall include in the annual report to the Controller, pursuant to Sections 33080 and 33080.1, all of the following information:

(1) The sales prices of homes purchased with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2005, inclusive.

(2) The sales prices of homes purchased and rehabilitated with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2005, inclusive.

(3) The incomes, and percentage of income paid for housing costs, of all households that purchased, and that purchased and rehabilitated, homes with assistance from the agency's Low and Moderate Income Housing Fund for each year from 2000 to 2005, inclusive.

(d) Except as provided in subdivision (b), all provisions of Section 50052.5, including any definitions, requirements, standards, and regulations adopted to implement those provisions, shall apply to this section.

(e) This section shall remain in effect only until January 1, 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. Chapter 6.1 (commencing with Section 50651) of Part 2 of Division 31 of the Health and Safety Code is repealed.

SEC. 4. Section 50781 of the Health and Safety Code is amended to read:

50781. Unless the context otherwise requires, the following definitions given in this section shall control construction of this chapter:

(a) ''Affordable'' means that, where feasible, low-income residents should not pay more than 30 percent of their monthly income for housing costs.

(b) ''Conversion costs'' includes the cost of acquiring the mobilehome park, the costs of planning and processing the conversion, the costs of any needed repairs or rehabilitation, and any expenditures required by a governmental agency or lender for the project.

(c) ''Department'' means the Department of Housing and Community Development.

(d) ''Fund'' means the Mobilehome Park Purchase Fund created pursuant to Section 50782.

(e) ''Housing costs'' means the total cost of owning, occupying, and maintaining a mobilehome and a lot or space in a mobilehome park. The department's regulations shall specify the factors included in these costs and may, for the purposes of calculating affordability, establish reasonable allowances.

(f) ''Individual interest in a mobilehome park'' means any interest that is fee ownership or a lesser interest that entitles the holder to occupy a lot or space in a mobilehome park for a period of not less than either 15 years or the life of the holder. Individual interests in a mobilehome park include, but are not limited to, the following:

(1) Ownership of a lot or space in a mobilehome park or subdivision.

(2) A membership or shares in a stock cooperative, as defined in Section 11003.2 of the Business and Professions Code, or a limited equity housing cooperative, as defined in Section 33007.5 of this code.

(3) Membership in a nonprofit mutual benefit corporation that owns, operates, or owns and operates the mobilehome park.

(g) ''Low-income resident'' means an individual or household that is a lower income household, as defined in Section 50079.5. However,

personal assets shall not be considered in the calculation of income, except to the extent that they actually generate income.

(h) ''Low-income spaces'' means those spaces in a mobilehome park operated by a resident organization, a qualified nonprofit housing sponsor, or a local public entity that are occupied by low-income residents.

(i) ''Mobilehome park'' means a mobilehome park, as defined in Section 18214, or a manufactured home subdivision created by the conversion of a mobilehome park, as defined in Section 18214, including a senior park, to resident ownership or ownership by a qualified nonprofit housing sponsor or local public entity.

(j) ''Program'' means the Mobilehome Park Resident Ownership Program.

(k) ''Qualified nonprofit housing sponsor'' means a nonprofit public benefit corporation, as defined in Part 2 (commencing with Section 5110) of Division 2 of the Corporations Code, that (1) has received its tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, (2) is not affiliated with or controlled by a for-profit organization or individual, (3) has extensive experience with the development and operation of publicly subsidized affordable housing, (4) the department determines is qualified by experience and capability to own and operate a mobilehome park that provides housing affordable to low-income households, and (5) has formal arrangements for ensuring resident participation or input in the management of the park that may include, but not be limited to, membership on the board of directors. ''Qualified nonprofit housing sponsor'' also means a limited partnership where all of the general partners are nonprofit mutual or public benefit corporations that meet the requirements of paragraphs (1) to (5), inclusive.

(*l*) ''Resident organization'' means a group of mobilehome park residents who have formed a nonprofit corporation, cooperative corporation, or other entity or organization for the purpose of acquiring the mobilehome park in which they reside and converting the mobilehome park to resident ownership. The membership of a resident organization shall include at least two-thirds of the households residing in the mobilehome park, or in each park of a combination of parks where the residents of two or more parks combine to form a single resident organization. The two-thirds of households in the resident organization at the time of funding the park need not be the same households that were residing in the park when the application for assistance was submitted to the department. A household's membership in the resident organization when the application was submitted to the department shall not be a requirement for that household to receive a loan or assistance under this chapter.

(m) ''Resident ownership'' means, depending on the context, either the ownership by a resident organization of an interest in a mobilehome park that entitles the resident organization to control the operations of the mobilehome park for a term of no less than 15 years, or the ownership of individual interests in a mobilehome park, or both.

SEC. 5. Section 50784 of the Health and Safety Code is amended to read:

50784. (a) The department may make loans from the fund to (1) individual low-income residents of mobilehome parks that have converted to resident ownership, (2) resident organizations that have converted or plan to convert a mobilehome park to resident ownership, or (3) qualified nonprofit housing sponsors or local public entities that plan to acquire a mobilehome park, provided that no less than 30 percent of the spaces in the park are for occupancy by manufactured homes owned by low-income residents. The purpose of providing loans pursuant to this section is to reduce the monthly housing costs for low-income residents to an affordable level.

(b) (1) Any mobilehome park purchased by a local public entity with a loan pursuant to this section shall be transferred to a nonprofit housing sponsor or resident organization that has converted, or plans to convert, the park to resident ownership no later than three years from the date of loan closing, with all obligations under the loan assumed by the nonprofit organization or resident organization.

(2) If a local public entity has made a good faith effort, but has not been able, to transfer the park by the end of the three-year period, the entity may apply to the department for an additional three-year extension. Upon a determination by the department that the local public entity has made a good faith effort to transfer the park in accordance with paragraph (1), it shall have an additional three years from the expiration date of the first three-year period to consummate the transfer. The three-year extension shall only be granted once by the department for each loan to a local public entity.

(3) Where a local public entity fails to make a good faith effort to transfer the park within the first three-year period, as determined by the department, or fails to transfer the park by the expiration date of the extended three-year period, it shall repay the loan in full to the department.

(c) Loans provided pursuant to this section shall be for a term of no more than 30 years and shall bear interest at a rate of 3 percent per annum.

(d) The department may establish flexible repayment terms for loans provided pursuant to this section if the terms are necessary to reduce the monthly housing costs for low-income residents to an affordable level, and do not represent an unacceptable risk to the security of the fund.

Flexible repayment terms may include, but are not limited to, graduated payment schedules with negative amortization.

(e) Loans provided to low-income residents pursuant to this section shall be for the minimum amount necessary to reduce the borrower's monthly housing costs to an affordable level. All of the following shall apply to loans to finance individual interests pursuant to this section:

(1) To the extent possible, loan amounts shall not exceed 50 percent of the acquisition costs of the individual interests in the mobilehome parks. However, the loan amounts may be for up to 100 percent of the acquisition costs of the individual interests in the mobilehome parks when approved by the department.

(2) The department may grant approval to exceed 50 percent of the acquisition costs of the individual interests only where both of the following are demonstrated:

(A) That the low-income resident has made an effort to secure additional funding from other sources and these funds are not available.

(B) That the low-income resident would be unable to purchase an individual interest without a waiver of the 50 percent financing limitation.

(3) The total indebtedness of the loan provided pursuant to this section plus any senior debt upon individual interests may not exceed 100 percent of the value of the collateral securing the loan, plus the amount of costs incidentally, but directly, related to the acquisition.

(f) Loans provided to resident organizations, qualified nonprofit housing sponsors, or local public entities pursuant to this section shall be for the minimum amount necessary to reduce the monthly housing costs of low-income residents to an affordable level. All of the following shall apply to loans made to resident organizations, qualified nonprofit housing sponsors, or local public entities pursuant to this section:

(1) To the extent possible, loan amounts shall not exceed 50 percent of the conversion costs attributable to the low-income spaces. However, the loan amounts may be for up to 95 percent of the conversion costs attributable to the low-income spaces when approved by the department.

(2) The department may grant approval to exceed 50 percent of the conversion costs attributable to low-income spaces only where both of the following are demonstrated:

(A) That the applicant has made an effort to secure additional funds from other sources and these funds are not available.

(B) That the project would not be feasible as determined by the department without a waiver of the 50 percent financing limitation.

(3) The total secured debt in a superior position to the department's loan plus the department's loan shall not exceed the value of the collateral securing the loan plus the amount of costs incidentally, but

directly, related to the acquisition and, if applicable, rehabilitation of the park.

(g) Funds provided pursuant to this section shall not be used to (1) assist residents who are not of low income, (2) reduce monthly housing costs for low-income residents to less than 30 percent of their monthly income, or (3) facilitate the purchase of a park by a qualified nonprofit corporation or local public entity from a public entity that had acquired the park prior to the commitment of the loan from the program.

(h) Subject to the restrictions of this subdivision, funds provided pursuant to this section may be used to finance the costs of relocating a mobilehome park to a more suitable site within the same jurisdiction if the department determines that the cost of the relocation, including any and all relocation costs to the affected households, is a more prudent expenditure of funds than the costs of needed or repetitive repairs to the existing park. Funds provided pursuant to this section shall not be used to relieve a park owner of any responsibility for covering the costs of mitigating the impacts of a park closure as may be provided for by local ordinance or pursuant to Section 65863.7 or 66427.4 of the Government Code.

CHAPTER 474

An act to amend Sections 22502, 22504, 22601.5, 22604, 26400, and 26401 of the Education Code, relating to state teachers' retirement.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 22502 of the Education Code is amended to read:

22502. (a) Any person employed by a school district or county office of education to perform creditable service on a part-time basis, who is not already a member of the Defined Benefit Program, shall become a member as of the first day of the pay period following his or her employment to perform creditable service for 50 percent or more of the full-time position, unless excluded from membership pursuant to Section 22601.

(b) Any person employed by a community college district to perform creditable service on a part-time basis, who is not already a member of the Defined Benefit Program, shall become a member as of the first day of the pay period following his or her employment to perform creditable

service that is not subject to Section 87474, 87480, 87481, 87482, or 87482.5, unless excluded from membership pursuant to Section 22601.

(c) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

SEC. 2. Section 22504 of the Education Code is amended to read:

22504. (a) Any person employed by a school district or county office of education to perform creditable service on a part-time basis, who is not already a member of the Defined Benefit Program, shall become a member as of the first day of the pay period following the pay period in which the person performed at least 60 hours of creditable service, if employed on an hourly basis, or 10 days of creditable service, if employed on a daily basis, during the school year, in one school district or county office of education, unless excluded from membership pursuant to Section 22601.

(b) Any person employed by a community college district to perform creditable service on a part-time basis, who is not already a member of the Defined Benefit Program, shall become a member as of the first day of the pay period following his or her employment to perform creditable service that is not subject to Section 87474, 87480, 87481, 87482, or 87482.5, unless excluded from membership pursuant to Section 22601.

(c) Subdivision (a) does not apply to persons who perform service subject to coverage under this part and who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(d) Subdivision (b) shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

SEC. 3. Section 22601.5 of the Education Code is amended to read:

22601.5. (a) Any person employed by a school district or county office of education to perform creditable service who is not already a member in the Defined Benefit Program and whose basis of employment is less than 50 percent of the time an employer requires for the full-time position is excluded from mandatory membership in the Defined Benefit Program.

(b) Any person employed by a community college district to perform creditable service pursuant to Section 87474, 87480, 87481, 87482, or 87482.5 who is not already a member of the Defined Benefit Program is excluded from mandatory membership in the Defined Benefit Program.

(c) This section shall apply to persons who perform service subject to coverage under this part and to persons who are employed by

employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

SEC. 4. Section 22604 of the Education Code is amended to read:

22604. (a) Any person employed to perform creditable service on a part-time basis, who is not already a member of the Defined Benefit Program and who performs less than 60 hours of creditable service in a pay period if employed on an hourly basis, or less than 10 days of creditable service in a pay period if employed on a daily basis, during the school year in one school district or county office of education, is excluded from mandatory membership in the Defined Benefit Program.

(b) Any person employed by a community college district to perform creditable service pursuant to Section 87474, 87480, 87481, 87482, or 87482.5, who is not already a member of the Defined Benefit Program, is excluded from mandatory membership in the Defined Benefit Program.

(c) Subdivision (a) does not apply to persons who perform service subject to coverage under this part and who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

(d) Subdivision (b) shall apply to persons who perform service subject to coverage under this part and to persons who are employed by employers who provide benefits for their employees under Part 14 (commencing with Section 26000).

SEC. 5. Section 26400 of the Education Code is amended to read:

26400. (a) A person employed on a part-time basis by a school district or county office of education to perform creditable service for less than 50 percent of each full-time position shall become a participant on the later of the first day on which creditable service is performed for an employer that provides the Cash Balance Benefit Program or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program, provided that creditable service is not performed for the same employer with whom the person is subject to mandatory membership in the Defined Benefit Program.

(b) A person employed on a temporary basis by a community college district, who is not subject to mandatory membership in the Defined Benefit Program pursuant to Section 22502 or 22504 for each position with the same employer, shall become a participant on the later of the first day on which creditable service is performed for an employer that provides the Cash Balance Benefit Program or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(c) If the employer's governing board's action to provide the Cash Balance Benefit Program gives employees the right to elect coverage under social security or an alternative retirement plan offered by the

employer in addition to the Cash Balance Benefit Program, the employee may elect within 60 calendar days of the latest of the first day on which creditable service is performed, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program to be covered by social security or to participate in the alternative retirement plan in lieu of participating in the Cash Balance Benefit Program. Any election may not preclude an employee from participating in the Cash Balance Benefit Program at a later date so long as the Cash Balance Benefit Program is provided by the employer and the employee is eligible to participate in the Cash Balance Benefit Program.

(d) If subdivision (c) is applicable, the employer shall inform employees pursuant to subdivision (c) of Section 26300 of their right to make an election and the election shall be made on a form prescribed by the system and filed with the employer. The election shall become effective on the later of the first day on which creditable service is performed or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(e) If the participant's basis of employment with a school district or county office of education that provides the Cash Balance Benefit Program changes to employment to perform creditable service for 50 percent or more of the full-time position during one school year with the same employer, creditable service performed for that employer shall no longer be covered under the Cash Balance Benefit Program. Creditable service performed for that employer shall be subject to coverage by the Defined Benefit Program as of the first day of the pay period following the change in the participant's basis of employment.

(f) If the participant's basis of employment with a community college district changes to employment that is subject to mandatory membership in the Defined Benefit Program pursuant to Section 22501, 22502, or 22504 during one school year with the same employer, creditable service performed for that employer shall no longer be covered under the Cash Balance Benefit Program. Creditable service performed for that employer shall be subject to coverage by the Defined Benefit Program as of the first day of the pay period following the change in the participant's basis of employment.

SEC. 6. Section 26401 of the Education Code is amended to read:

26401. (a) A member of the Defined Benefit Program who is employed to perform creditable service on a part-time basis for less than 50 percent of each full-time position by a school district or county office of education that provides the Cash Balance Benefit Program may elect to become a participant for creditable service subject to coverage under the Cash Balance Benefit Program for that employer, provided that the

creditable service is not performed for the same employer with whom the member is also subject to mandatory membership in the Defined Benefit Program.

(b) A member of the Defined Benefit Program who is employed pursuant to Section 87474, 87480, 87481, 87482, or 87482.5 by a community college district that provides the Cash Balance Benefit Program may elect to become a participant for creditable service subject to coverage under the Cash Balance Benefit Program for that employer, provided that the creditable service is not performed for the same employer with whom the member is also subject to mandatory membership in the Defined Benefit Program.

(c) The election shall be made on a form prescribed by the system and shall be filed with the employer within 60 calendar days of the later of the first day of employment with an employer that provides the Cash Balance Benefit Program, the date of the employer's governing board's action to provide the Cash Balance Benefit Program, or the effective date of the employer's governing board's action to provide the Cash Balance Benefit Program.

(d) Employers shall make available to employees specified in subdivisions (a) and (b) information and forms provided by the system for making an election regarding participation, and shall maintain the written election by the employee in employer files. The election shall become effective on the first day of the pay period following the pay period in which the election is made.

(e) If an election is made pursuant to subdivision (a) and the participant's basis of employment with that employer changes to employment to perform creditable service for 50 percent or more of the full-time position during one school year with the same employer, creditable service performed for that employer shall no longer be covered under the Cash Balance Benefit Program. Creditable service performed for that employer shall be subject to coverage under the Defined Benefit Program as of the first day of the pay period following the change in the participant's basis of employment.

(f) If an election is made pursuant to subdivision (b) and the participant's basis of employment with the community college district changes to employment that is subject to mandatory membership in the Defined Benefit Program pursuant to Section 22501, 22502, or 22504 during one school year with the same employer, creditable service performed for that employer shall no longer be covered under the Cash Balance Benefit Program. Creditable service performed for that employer shall be subject to coverage under the Defined Benefit Program as of the first day of the pay period following the change in the participant's basis of employment.

SEC. 7. This act shall be operative on July 1, 2005.

CHAPTER 475

An act relating to state claims, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. The sum of one million one hundred twenty-four thousand nine hundred sixty-three dollars and forty cents ($1,124,963.40) is hereby appropriated from the various funds, as specified in subdivision (b), to the Executive Officer of the California Victim Compensation and Government Claims Board for the payment of claims accepted by the board in accordance with the schedule set forth in subdivision (b). In addition, the sum of one hundred sixty-eight thousand seven hundred forty-four dollars and nineteen cents ($168,744.19) is hereby appropriated from the various funds, as specified in subdivision (c), to the Executive Officer of the California Victim Compensation and Government Claims Board as a 15-percent surcharge for the payment of the board's administrative costs of processing the claims identified in subdivision (b), in accordance with the schedule set forth in subdivision (c). Those payments shall be made from the funds and accounts identified in those schedules. In the case of Budget Act item schedules identified in the schedules set forth in subdivisions (b) and (c), those payments shall be made from the funds appropriated in the item schedule.

(b) Pursuant to subdivision (a), claims accepted by the California Victim Compensation and Government Claims Board shall be paid in accordance with the following schedule:

Total for Fund: California Residential Earthquake Recovery Fund (0285)	$34.14
Total for Fund: General Fund (0001)	$732,932.41
Total for Fund: Health Care Deposit Fund (0912)	$2,953.21
Total for Fund: Item 1110–001–0735(1), Budget Act of 2004	$497.77

Total for Fund: Item 1111–002–0421(1), Budget Act of 2004	$1,518.48
Total for Fund: Item 1111–002–0702(1), Budget Act of 2004	$1,076.66
Total for Fund: Item 1760–001–0666, Budget Act of 2004	$49,445.58
Total for Fund: Item 1900–015–0830, Budget Act of 2004	$946.93
Total for Fund: Item 2310–001–0400(1), Budget Act of 2004	$399.76
Total for Fund: Item 2320–001–0317(1), Budget Act of 2004	$886.27
Total for Fund: Item 2660–001–0042(1), Budget Act of 2004	$388.54
Total for Fund: Item 2660–001–0042(2), Budget Act of 2004	$6,204.81
Total for Fund: Item 2740–001–0044(1), Budget Act of 2004	$11,835.53
Total for Fund: Item 2780–001–0683, Budget Act of 2004	$1,549.29
Total for Fund: Item 3480–001–0133(6), Budget Act of 2004	$32,991.27
Total for Fund: Item 3540–001–0001(1), Budget Act of 2004	$1,240.00
Total for Fund: Item 3600–001–0001(3), Budget Act of 2004	$9,735.00
Total for Fund: Item 3940–001–0001(3), Budget Act of 2004	$13,759.66
Total for Fund: Item 3940–001–0439(1), Budget Act of 2004	$3,249.09
Total for Fund: Item 4260–001–0001(2), Budget Act of 2004	$11,800.48
Total for Fund: Item 4260–111–0001(2), Budget Act of 2004	$13,535.67
Total for Fund: Item 4300–003–0001(1), Budget Act of 2004	$38,884.27
Total for Fund: Item 4300–101–0001(2), Budget Act of 2004	$16,267.54
Total for Fund: Item 4700–101–0890(1), Budget Act of 2004	$67.94

Total for Fund: Item 5180–001–0001(2), Budget Act of 2004	$39.31
Total for Fund: Item 5180–001–0001(3), Budget Act of 2004	$5,883.30
Total for Fund: Item 5180–001–0001(6), Budget Act of 2004, Program 35	$1,068.73
Total for Fund: Item 5180–001–0890(3), Budget Act of 2004, Program 35	$298.66
Total for Fund: Item 5180–111–0001(2), Budget Act of 2004	$422.13
Total for Fund: Item 5240–001–0001(1), Budget Act of 2004	$31,778.63
Total for Fund: Item 5240–001–0001(2), Budget Act of 2004	$52,563.25
Total for Fund: Item 5240–001–0001(4), Budget Act of 2004	$11,806.09
Total for Fund: Item 5460–001–0001(1), Budget Act of 2004	$264.88
Total for Fund: Item 6110–001–0001(2), Budget Act of 2004	$10,552.55
Total for Fund: Item 6610–001–0001(1), Budget Act of 2004	$917.76
Total for Fund: Item 6610–001–0001(2), Budget Act of 2004	$66.06
Total for Fund: Item 7100–001–0185(2), Budget Act of 2004	$10,165.11
Total for Fund: Item 7100–001–0588(2), Budget Act of 2004	$6,196.29
Total for Fund: Item 7100–001–0870(2), Budget Act of 2004	$7,095.35
Total for Fund: Item 7100–101–0871, Budget Act of 2004	$7,971.00
Total for Fund: Item 7350–001–0001(6), Budget Act of 2004	$11,917.25
Total for Fund: Item 7350–001–0001(10), Budget Act of 2004	$3,549.94
Total for Fund: Item 7350–001–0913(6), Budget Act of 2004	$632.79
Total for Fund: Item 7350–001–0452(5), Budget Act of 2004, Program 40	$1,011.20

Total for Fund: Public Employees' Health Care Fund (0822)	$99.60
Total for Fund: Transportation Fund, Transportation Revolving Fund (0048)	$7,600.00
Total for Fund: Unclaimed Property Fund (0970)	$863.22

(c) Pursuant to subdivision (a), surcharges on claims accepted by the California Victim Compensation and Government Claims Board, as identified in subdivision (b), shall be paid in accordance with the following schedule:

Total for Fund: California Residential Earthquake Recovery Fund (0285)	$5.12
Total for Fund: General Fund (0001)	$109,939.86
Total for Fund: Health Care Deposit Fund (0912)	$442.98
Total for Fund: Item 1110–001–0735(1), Budget Act of 2004	$74.67
Total for Fund: Item 1111–002–0421(1), Budget Act of 2004	$227.77
Total for Fund: Item 1111–002–0702(1), Budget Act of 2004	$161.50
Total for Fund: Item 1760–001–0666, Budget Act of 2004	$7,416.84
Total for Fund: Item 1900–015–0830, Budget Act of 2004	$142.04
Total for Fund: Item 2310–001–0400(1), Budget Act of 2004	$59.96
Total for Fund: Item 2320–001–0317(1), Budget Act of 2004	$132.94
Total for Fund: Item 2660–001–0042(1), Budget Act of 2004	$58.28
Total for Fund: Item 2660–001–0042(2), Budget Act of 2004	$930.72
Total for Fund: Item 2740–001–0044(1), Budget Act of 2004	$1,775.33
Total for Fund: Item 2780–001–0683, Budget Act of 2004	$232.39
Total for Fund: Item 3480–001–0133(6), Budget Act of 2004	$4,948.69

Total for Fund: Item 3540–001–0001(1), Budget Act of 2004 . . . . . $186.00
Total for Fund: Item 3600–001–0001(3), Budget Act of 2004 . . . . . $1,460.25
Total for Fund: Item 3940–001–0001(3), Budget Act of 2004 . . . . . $2,063.95
Total for Fund: Item 3940–001–0439(1), Budget Act of 2004 . . . . . $487.36
Total for Fund: Item 4260–001–0001(2), Budget Act of 2004 . . . . . $1,770.07
Total for Fund: Item 4260–111–0001(2), Budget Act of 2004 . . . . . $2,030.05
Total for Fund: Item 4300–003–0001(1), Budget Act of 2004 . . . . . $5,832.64
Total for Fund: Item 4300–101–0001(2), Budget Act of 2004 . . . . . $2,440.13
Total for Fund: Item 4700–101–0890(1), Budget Act of 2004 . . . . . $10.19
Total for Fund: Item 5180–001–0001(2), Budget Act of 2004 . . . . . $5.90
Total for Fund: Item 5180–001–0001(3), Budget Act of 2004 . . . . . $882.50
Total for Fund: Item 5180–001–0001(6), Budget Act of 2004, Program 35 . . . . . $160.31
Total for Fund: Item 5180–001–0890(3), Budget Act of 2004, Program 35 . . . . . $44.80
Total for Fund: Item 5180–111–0001(2), Budget Act of 2004 . . . . . $63.32
Total for Fund: Item 5240–001–0001(1), Budget Act of 2004 . . . . . $4,766.79
Total for Fund: Item 5240–001–0001(2), Budget Act of 2004 . . . . . $7,884.49
Total for Fund: Item 5240–001–0001(4), Budget Act of 2004 . . . . . $1,770.91
Total for Fund: Item 5460–001–0001(1), Budget Act of 2004 . . . . . $39.73
Total for Fund: Item 6110–001–0001(2), Budget Act of 2004 . . . . . $1,582.88
Total for Fund: Item 6610–001–0001(1), Budget Act of 2004 . . . . . $137.66

Total for Fund: Item 6610–001–0001(2), Budget Act of 2004	$9.91
Total for Fund: Item 7100–001–0185(2), Budget Act of 2004	$1,524.77
Total for Fund: Item 7100–001–0588(2), Budget Act of 2004	$929.44
Total for Fund: Item 7100–001–0870(2), Budget Act of 2004	$1,064.30
Total for Fund: Item 7100–101–0871, Budget Act of 2004	$1,195.65
Total for Fund: Item 7350–001–0001(6), Budget Act of 2004	$1,787.59
Total for Fund: Item 7350–001–0001(10), Budget Act of 2004	$532.49
Total for Fund: Item 7350–001–0913(6), Budget Act of 2004	$94.92
Total for Fund: Item 7350–001–0452(5), Budget Act of 2004, Program 40	$151.68
Total for Fund: Public Employees' Health Care Fund (0822)	$14.94
Total for Fund: Transportation Fund, Transportation Revolving Fund (0048)	$1,140.00
Total for Fund: Unclaimed Property Fund (0970)	$129.48

SEC. 2. In addition to amounts identified in Section 1, the sum of two hundred eighty-two thousand two hundred fifty-three dollars ($282,253) of the unencumbered balance in the Safe Neighborhood Parks, Clean Water, Clean Air and Coastal Protection Bond Fund, which was previously appropriated to the Department of Parks and Recreation in Item 3790-102-0005 of the Budget Act of 2000 (Chapter 52 of the Statutes of 2000), shall be reappropriated as follows:

(a) The sum of two hundred forty-five thousand four hundred thirty-eight dollars ($245,438) to the Executive Officer of the California Victim Compensation and Government Claims Board for the payment of a claim to the City of Hermosa Beach.

(b) The sum of thirty-six thousand eight hundred fifteen dollars ($36,815) for payment to the Executive Officer of the California Victim Compensation and Government Claims Board as a 15-percent surcharge for the payment of the board's administrative costs of processing the claim to the City of Hermosa Beach.

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

In order to 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 amend Sections 350, 354, 355, and 420 of the Family Code, relating to marriage, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 350 of the Family Code is amended to read:

350. (a) Before entering a marriage, or declaring a marriage pursuant to Section 425, the parties shall first obtain a marriage license from a county clerk.

(b) If a marriage is to be entered into pursuant to subdivision (b) of Section 420, the attorney-in-fact shall appear before the county clerk on behalf of the party who is overseas, as prescribed in subdivision (a).

SEC. 2. Section 354 of the Family Code is amended to read:

354. (a) Each applicant for a marriage license may be required to present authentic identification as to name.

(b) For the purpose of ascertaining the facts mentioned or required in this part, if the clerk deems it necessary, the clerk may examine the applicants for a marriage license on oath at the time of the application. The clerk shall reduce the examination to writing and the applicants shall sign it.

(c) If necessary, the clerk may request additional documentary proof as to the accuracy of the facts stated.

(d) Applicants for a marriage license shall not be required to state, for any purpose, their race or color.

(e) If a marriage is to be entered into pursuant to subdivision (b) of Section 420, the attorney-in-fact shall comply with the requirements of this section on behalf of the applicant who is overseas, if necessary.

SEC. 3. Section 355 of the Family Code is amended to read:

355. (a) The forms for the application for a marriage license and the marriage license shall be prescribed by the State Department of Health Services, and shall be adapted to set forth the facts required in this part.

(b) The form for the application for a marriage license shall include an affidavit on the back, which the applicants shall sign, affirming that they have received the brochure provided for in Section 358. If the marriage is to be entered into pursuant to subdivision (b) of Section 420, the attorney-in-fact shall sign the affidavit on behalf of the applicant who is overseas.

(c) The affidavit required by subdivision (b) shall state:

AFFIDAVIT

I acknowledge that I have received the brochure titled _____

_____	_____
Signature of Bride	Date
_____	_____
Signature of Groom	Date

SEC. 4. Section 420 of the Family Code is amended to read:

420. (a) No particular form for the ceremony of marriage is required for solemnization of the marriage, but the parties shall declare, in the presence of the person solemnizing the marriage and necessary witnesses, that they take each other as husband and wife.

(b) Notwithstanding subdivision (a), a member of the Armed Forces of the United States who is stationed overseas and serving in a conflict or a war and is unable to appear for the licensure and solemnization of the marriage may enter into that marriage by the appearance of an attorney-in-fact, commissioned and empowered in writing for that purpose through a power of attorney. The attorney-in-fact must personally appear at the county clerk's office with the party who is not stationed overseas, and present the original power of attorney duly signed by the party stationed overseas and acknowledged by a notary or witnessed by two officers of the United States Armed Forces. The power of attorney shall state the true legal names of the parties to be married, and that the power of attorney is solely for the purpose of authorizingg the attorney-in-fact to obtain a marriage license on the person's behalf and participate in the solemnization of the marriage. The original power of attorney shall be a part of the marriage certificate upon registration.

(c) No contract of marriage, if otherwise duly made, shall be invalidated for want of conformity to the requirements of any religious sect.

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 ensure that members of the Armed Forces of the United States have the ability to legally marry in the State of California while stationed overseas, it is necessary that this act take effect immediately.

CHAPTER 477

An act to amend Section 118275 of the Health and Safety Code, relating to medical waste.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 118275 of the Health and Safety Code is amended to read:

118275. To containerize or store medical waste, a person shall do all of the following:

(a) Medical waste shall be contained separately from other waste at the point of origin in the producing facility. Sharps containers may be placed in biohazard bags or in containers with biohazard bags.

(b) Biohazardous waste, except biohazardous waste as defined in subdivision (g) of Section 117635, shall be placed in a red biohazard bag conspicuously labeled with the words ''Biohazardous Waste'' or with the international biohazard symbol and the word ''BIOHAZARD.''

(c) Sharps waste shall be contained in a sharps container pursuant to Section 118285.

(d) (1) Biohazardous waste, which meets the conditions of subdivision (f) of Section 117635 because it is contaminated through contact with, or having previously contained, chemotherapeutic agents, shall be segregated for storage, and, when placed in a secondary container, that container shall be labeled with the words ''Chemotherapy Waste,'' ''CHEMO,'' or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the biohazardous waste pursuant to Section 118222.

(2) Biohazardous waste, which meets the conditions of subdivision (f) of Section 117635 because it is comprised of human surgery specimens or tissues which have been fixed in formaldehyde or other fixatives, shall be segregated for storage and, when placed in a secondary

container, that container shall be labeled with the words ''Pathology Waste,'' ''PATH,'' or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the biohazardous waste pursuant to Section 118222.

(e) Sharps waste, which meets the conditions of subdivision (f) of Section 117635, shall be placed in sharps containers labeled in accordance with the industry standard with the words ''Chemotherapy Waste,'' ''Chemo,'' or other label approved by the department, and segregated to ensure treatment of the sharps waste pursuant to Section 118222.

(f) Biohazardous waste, which are recognizable human anatomical parts, as specified in Section 118220, shall be segregated for storage and, when placed in a secondary container for treatment as pathology waste, that container shall be labeled with the words ''Pathology Waste,'' ''PATH,'' or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the biohazardous waste pursuant to Section 118222.

(g) Biohazardous waste, which meets the conditions specified in subdivision (g) of Section 117635, shall be segregated for storage and, when placed in a container or secondary container, that container shall be labeled with the words ''INCINERATION ONLY'' or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the biohazardous waste pursuant to Section 118222.

(h) A person may consolidate into a common container all of the wastes in this section provided that the consolidated waste is treated by an extremely high heat technology approved pursuant to subparagraph (B) of paragraph (1) of subdivision (a) of Section 118215. The container shall be labeled with the biohazardous waste symbol and the words ''HIGH HEAT ONLY'' or other label approved by the department on the lid and on the sides, so as to be visible from any lateral direction, to ensure treatment of the biohazardous waste pursuant to this subdivision.

CHAPTER 478

An act to amend Sections 81008, 84101, 84103, 84108, 84203, 84204, and 84502 of, to repeal Section 84305.6 of, and to repeal and add Sections 84305.5 and 84506 of, the Government Code, relating to the Political Reform Act of 1974, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 81008 of the Government Code is amended to read:

81008. (a) Every report and statement filed pursuant to this title is a public record open for public inspection and reproduction during regular business hours, commencing as soon as practicable, but in any event not later than the second business day following the day on which it was received. No conditions whatsoever shall be imposed upon persons desiring to inspect or reproduce reports and statements filed under this title, nor shall any information or identification be required from these persons. Copies shall be provided at a charge not to exceed ten cents ($0.10) per page. In addition, the filing officer may charge a retrieval fee not to exceed five dollars ($5) per request for copies of reports and statements which are five or more years old. A request for more than one report or statement or report and statement at the same time shall be considered a single request.

(b) Campaign statements shall be open for public inspection and reproduction from 9:00 a.m. to 5:00 p.m. on the Saturday preceding a statewide primary or statewide general election in the offices of the Secretary of State, Registrar-Recorder of Los Angeles County, Registrar of Voters of San Diego County, and Registrar of Voters of the City and County of San Francisco.

SEC. 2. Section 84101 of the Government Code is amended to read:

84101. (a) A committee that is a committee by virtue of subdivision (a) of Section 82013 shall file with the Secretary of State a statement of organization within 10 days after it has qualified as a committee. The committee shall file the original of the statement of organization with the Secretary of State and shall also file a copy of the statement of organization with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215. The original and copy of the statement of organization shall be filed within 10 days after the committee has qualified as a committee. The Secretary of State shall assign a number to each committee that files a statement of organization and shall notify the committee of the number. The Secretary of State shall send a copy of statements filed pursuant to this section to the county elections official of each county which he or she deems appropriate. A county elections official who receives a copy of a statement of organization from the Secretary of State pursuant to this section shall send a copy of the statement to the clerk of each city in the county that he or she deems appropriate.

(b) In addition to filing the statement of organization as required by subdivision (a), if a committee qualifies as a committee under

subdivision (a) of Section 82013 before the date of an election in connection with which the committee is required to file preelection statements, but after the closing date of the last campaign statement required to be filed before the election pursuant to Section 84200.7 or 84200.8, the committee shall file, by facsimile transmission, guaranteed overnight delivery, or personal delivery within 24 hours of qualifying as a committee, the information required to be reported in the statement of organization. The information required by this subdivision shall be filed with the filing officer with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215.

(c) If an independent expenditure committee qualifies as a committee pursuant to subdivision (a) of Section 82013 during the time period described in Section 82036.5 and makes independent expenditures of one thousand dollars ($1,000) or more to support or oppose a candidate or candidates for office, the committee shall file by facsimile transmission, online transmission, guaranteed overnight delivery, or personal delivery within 24 hours of qualifying as a committee, the information required to be reported in the statement of organization. The information required by this section shall be filed with the filing officer with whom the committee is required to file the original of its campaign reports pursuant to Section 84215, and to file at all locations required for the candidate or candidates supported or opposed by the independent expenditures. The filings required by this section are in addition to filings that may be required by Sections 84203.5 and 84204.

(d) For purposes of this section, in calculating whether one thousand dollars ($1,000) in contributions has been received, payments for a filing fee or for a statement of qualifications to appear in a sample ballot shall not be included if these payments have been made from the candidate's personal funds.

SEC. 3. Section 84103 of the Government Code is amended to read:

84103. (a) Whenever there is a change in any of the information contained in a statement of organization, an amendment shall be filed within 10 days to reflect the change. The committee shall file the original of the amendment with the Secretary of State and shall also file a copy of the amendment with the local filing officer, if any, with whom the committee is required to file the originals of its campaign reports pursuant to Section 84215.

(b) In addition to filing an amendment to a statement of organization as required by subdivision (a), a committee as defined in subdivision (a) of Section 82013 shall, by facsimile transmission, online transmission, guaranteed overnight delivery, or personal delivery within 24 hours, notify the filing officer with whom it is required to file the originals of its campaign reports pursuant to Section 84215 when the change requiring the amendment occurs before the date of the election in

connection with which the committee is required to file a preelection statement, but after the closing date of the last preelection statement required to be filed for the election pursuant to Section 84200.7 or 84200.8, if any of the following information is changed:

(1) The name of the committee.

(2) The name of the treasurer or other principal officers.

(3) The name of any candidate or committee by which the committee is controlled or with which it acts jointly.

The notification shall include the changed information, the date of the change, the name of the person providing the notification, and the committee's name and identification number.

A committee may file a notification online only if the appropriate filing officer is capable of receiving the notification in that manner.

SEC. 4. Section 84108 of the Government Code is amended to read:

84108. (a) Every slate mailer organization shall comply with the requirements of Sections 84100, 84101, 84103, and 84104.

(b) The statement of organization of a slate mailer organization shall include:

(1) The name, street address, and telephone number of the organization. In the case of an individual or business entity that qualifies as a slate mailer organization, the name of the slate mailer organization shall include the name by which the individual or entity is identified for legal purposes. Whenever identification of a slate mailer organization is required by this title, the identification shall include the full name of the slate mailer organization as contained in its statement of organization.

(2) The full name, street address, and telephone number of the treasurer and other principal officers.

(3) The full name, street address, and telephone number of each person with final decisionmaking authority as to which candidates or measures will be supported or opposed in the organization's slate mailers.

(c) The statement of organization shall be filed with the Secretary of State within 10 days after the slate mailer organization receives or is promised five hundred dollars ($500) or more for producing one or more slate mailers. However, if an entity qualifies as a slate mailer organization before the date of an election in which it is required to file preelection statements, but after the closing date of the last campaign statement required to be filed before the election pursuant to Section 84218, the slate mailer organization shall file with the Secretary of State, by facsimile transmission, guaranteed overnight delivery, or personal delivery within 24 hours of qualifying as a slate mailer organization, the information required to be reported in the statement of organization.

SEC. 5. Section 84203 of the Government Code is amended to read:

84203. (a) Each candidate or committee that makes or receives a late contribution, as defined in Section 82036, shall report the late contribution to each office with which the candidate or committee is required to file its next campaign statement pursuant to Section 84215. The candidate or committee that makes the late contribution shall report his or her full name and street address and the full name and street address of the person to whom the late contribution has been made, the office sought if the recipient is a candidate, or the ballot measure number or letter if the recipient is a committee primarily formed to support or oppose a ballot measure, and the date and amount of the late contribution. The recipient of the late contribution shall report his or her full name and street address, the date and amount of the late contribution, and whether the contribution was made in the form of a loan. The recipient shall also report the full name of the contributor, his or her street address, occupation, and the name of his or her employer, or if self-employed, the name of the business.

(b) A late contribution shall be reported by facsimile transmission, guaranteed overnight delivery, or personal delivery within 24 hours of the time it is made in the case of the candidate or committee that makes the contribution and within 24 hours of the time it is received in the case of the recipient. A late contribution shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(c) A late contribution need not be reported nor shall it be deemed accepted if it is not cashed, negotiated, or deposited and is returned to the contributor within 24 hours of its receipt.

(d) A report filed pursuant to this section shall be in addition to any other campaign statement required to be filed by this chapter.

(e) The report required pursuant to this section is not required for contributions disclosed pursuant to subdivision (a) or (b) of Section 85309.

SEC. 6. Section 84204 of the Government Code is amended to read:

84204. (a) A committee that makes a late independent expenditure, as defined in Section 82036.5, shall report the late independent expenditure by facsimile transmission, guaranteed overnight delivery, or personal delivery within 24 hours of the time it is made. A late independent expenditure shall be reported on subsequent campaign statements without regard to reports filed pursuant to this section.

(b) A committee that makes a late independent expenditure shall report its full name and street address, as well as the name, office, and district of the candidate if the report is related to a candidate, or if the report is related to a measure, the number or letter of the measure, the jurisdiction in which the measure is to be voted upon, and the amount and the date, as well as a description of goods or services for which the

late independent expenditure was made. In addition to the information required by this subdivision, a committee that makes a late independent expenditure shall include with its late independent expenditure report the information required by paragraphs (1) to (5), inclusive, of subdivision (f) of Section 84211, covering the period from the day after the closing date of the last campaign report filed to the date of the late independent expenditure, or if the committee has not previously filed a campaign statement, covering the period from the previous January 1 to the date of the late independent expenditure. No information required by paragraphs (1) to (5), inclusive, of subdivision (f) of Section 84211, that is required to be reported with a late independent expenditure report by this subdivision, is required to be reported on more than one late independent expenditure report.

(c) A committee that makes a late independent expenditure shall file a late independent expenditure report in the places where it would be required to file campaign statements under this article as if it were formed or existing primarily to support or oppose the candidate or measure for or against which it is making the late independent expenditure.

(d) A report filed pursuant to this section shall be in addition to any other campaign statement required to be filed by this article.

(e) The report required pursuant to this section is not required for any committee filing reports pursuant to Section 85500.

SEC. 7. Section 84305.5 of the Government Code, as amended by Chapter 893 of the Statutes of 1996, is repealed.

SEC. 8. Section 84305.5 of the Government Code, as amended by Proposition 208 at the November 5, 1996, general election, is repealed.

SEC. 9. Section 84305.5 is added to the Government Code, to read:

84305.5. (a) No slate mailer organization or committee primarily formed to support or oppose one or more ballot measures shall send a slate mailer unless:

(1) The name, street address, and city of the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures are shown on the outside of each piece of slate mail and on at least one of the inserts included with each piece of slate mail in no less than 8-point roman type which shall be in a color or print which contrasts with the background so as to be easily legible. A post office box may be stated in lieu of a street address if the street address of the slate mailer organization or the committee primarily formed to support or oppose one or more ballot measure is a matter of public record with the Secretary of State's Political Reform Division.

(2) At the top or bottom of the front side or surface of at least one insert or at the top or bottom of one side or surface of a postcard or other self-mailer, there is a notice in at least 8-point roman boldface type,

which shall be in a color or print which contrasts with the background so as to be easily legible, and in a printed or drawn box and set apart from any other printed matter. The notice shall consist of the following statement:

NOTICE TO VOTERS

THIS DOCUMENT WAS PREPARED BY (name of slate mailer organization or committee primarily formed to support or oppose one or more ballot measures), NOT AN OFFICIAL POLITICAL PARTY ORGANIZATION. Appearance in this mailer does not necessarily imply endorsement of others appearing in this mailer, nor does it imply endorsement of, or opposition to, any issues set forth in this mailer. Appearance is paid for and authorized by each candidate and ballot measure which is designated by an *.

(3) The name, street address, and city of the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures as required by paragraph (1) and the notice required by paragraph (2) may appear on the same side or surface of an insert.

(4) Each candidate and each ballot measure that has paid to appear in the slate mailer is designated by an *. Any candidate or ballot measure that has not paid to appear in the slate mailer is not designated by an *.

The * required by this subdivision shall be of the same type size, type style, color or contrast, and legibility as is used for the name of the candidate or the ballot measure name or number and position advocated to which the * designation applies except that in no case shall the * be required to be larger than 10-point boldface type. The designation shall immediately follow the name of the candidate, or the name or number and position advocated on the ballot measure where the designation appears in the slate of candidates and measures. If there is no slate listing, the designation shall appear at least once in at least 8-point boldface type, immediately following the name of the candidate, or the name or number and position advocated on the ballot measure.

(5) The name of any candidate appearing in the slate mailer who is a member of a political party differing from the political party which the mailer appears by representation or indicia to represent is accompanied, immediately below the name, by the party designation of the candidate, in no less than 9-point roman type which shall be in a color or print that contrasts with the background so as to be easily legible. The designation shall not be required in the case of candidates for nonpartisan office.

(b) For purposes of the designations required by paragraph (4) of subdivision (a), the payment of any sum made reportable by subdivision (c) of Section 84219 by or at the behest of a candidate or committee, whose name or position appears in the mailer, to the slate mailer organization or committee primarily formed to support or oppose one or more ballot measures, shall constitute a payment to appear, requiring the * designation. The payment shall also be deemed to constitute authorization to appear in the mailer.

SEC. 10. Section 84305.6 of the Government Code is repealed.

SEC. 11. Section 84502 of the Government Code is amended to read:

84502. ''Cumulative contributions'' means the cumulative amount of contributions received by a committee beginning 12 months prior to the date the committee made its first expenditure to qualify, support, or oppose the measure and ending within seven days of the time the advertisement is sent to the printer or broadcast station.

SEC. 12. Section 84506 of the Government Code is repealed.

SEC. 13. Section 84506 is added to the Government Code, to read:

84506. (a) A broadcast or mass mailing advertisement supporting or opposing a candidate or ballot measure, that is paid for by an independent expenditure, shall include a disclosure statement that identifies both of the following:

(1) The name of the committee making the independent expenditure.

(2) The names of the persons from whom the committee making the independent expenditure has received its two highest cumulative contributions of fifty thousand dollars ($50,000) or more during the 12-month period prior to the expenditure. If the committee can show, on the basis that contributions are spent in the order they are received, that contributions received from the two highest contributors have been used for expenditures unrelated to the candidate or ballot measure featured in the communication, the committee shall disclose the contributors making the next largest cumulative contributions of fifty thousand dollars ($50,000) or more.

(b) If an acronym is used to identify any committee names required by this section, the names of any sponsoring organization of the committee shall be printed on print advertisements or spoken in broadcast advertisements.

SEC. 14. With regard to Sections 7, 8, 9, and 10 of this bill, it is the intent of the Legislature to clarify the status of disclosure requirements affecting slate mail. The status of those requirements has been brought into question as a result of the passage of Proposition 208 in 1996 and Proposition 34 in 2000, and by litigation challenging the constitutionality of these two propositions. This bill may not be

interpreted to have any bearing on the state of the law prior to its effective date.

SEC. 15. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 16. The Legislature finds and declares that the provisions of this act further the purposes of both the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code and Proposition 208 within the meaning of Section 45 of that measure.

SEC. 17. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure fair disclosure of campaign contributors to campaign committees as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 479

An act to amend Sections 66453 and 66473.3 of, and to repeal Section 66473.2 of, the Government Code, relating to subdivisions.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 66453 of the Government Code is amended to read:

66453. (a) A local agency may make recommendations concerning proposed subdivisions in any adjoining city, or in any adjoining unincorporated territory for any proposed subdivision within the planning area of the requesting local agency. A local agency wishing to make recommendations concerning proposed subdivisions shall file with the local agency having jurisdiction over the subdivisions a map indicating the territory for which it wishes to make recommendations.

The local agency having jurisdiction shall issue a receipt for the territorial map.

(b) Within five days of a tentative map application being determined to be complete pursuant to Section 65943 for a proposed subdivision located, in whole or in part, within the territory outlined on the territorial map, the local agency shall transmit one copy of the proposed tentative map to the requesting local agency.

(c) Within 15 days of receiving a copy of a proposed subdivision map, the requesting local agency may submit recommendations to the local agency having jurisdiction. The local agency having jurisdiction shall consider these recommendations before acting on the tentative map.

SEC. 2. Section 66473.2 of the Government Code is repealed.

SEC. 3. Section 66473.3 of the Government Code is amended to read:

66473.3. The legislative body of a city or county may, by ordinance, require the design of a subdivision for which a tentative map or parcel map is required pursuant to Section 66426 to provide for appropriate cable television systems and for communication systems, including, but not limited to, telephone and Internet services, to each parcel in the subdivision.

''Appropriate cable television systems,'' as used in this section, means those franchised or licensed to serve the geographical area in which the subdivision is located.

This section shall not apply to the conversion of existing dwelling units to condominiums, community apartments, or stock cooperatives.

CHAPTER 480

An act to amend Sections 4181 and 13220 of the Fish and Game Code, relating to fish and game, and making an appropriation therefor.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 4181 of the Fish and Game Code is amended to read:

4181. (a) Except as provided in Section 4181.1, any owner or tenant of land or property that is being damaged or destroyed or is in danger of being damaged or destroyed by elk, bear, beaver, wild pig, wild turkeys, or gray squirrels, may apply to the department for a permit to kill the animals. Subject to the limitations in subdivisions (b) and (d),

the department, upon satisfactory evidence of the damage or destruction, actual or immediately threatened, shall issue a revocable permit for the taking and disposition of the animals under regulations adopted by the commission. The permit shall include a statement of the penalties that may be imposed for a violation of the permit conditions. Animals so taken shall not be sold or shipped from the premises on which they are taken except under instructions from the department. No iron-jawed or steel-jawed or any type of metal-jawed trap shall be used to take any bear pursuant to this section. No poison of any type may be used to take any gray squirrel or wild turkey pursuant to this section. The department shall designate the type of trap to be used to ensure the most humane method is used to trap gray squirrels. The department may require trapped squirrels to be released in parks or other nonagricultural areas. It is unlawful for any person to violate the terms of any permit issued under this section.

(b) The permit issued for taking bears pursuant to subdivision (a) shall contain the following facts:

(1) Why the issuance of the permit was necessary.

(2) What efforts were made to solve the problem without killing the bears.

(3) What corrective actions should be implemented to prevent reoccurrence.

(c) With respect to wild pigs, the department shall provide an applicant for a depredation permit to take wild pigs or a person who reports taking wild pigs pursuant to subdivision (b) of Section 4181.1 with written information that sets forth available options for wild pig control, including, but not limited to, depredation permits, allowing periodic access to licensed hunters, and holding special hunts authorized pursuant to Section 4188. The department may maintain and make available to these persons lists of licensed hunters interested in wild pig hunting and lists of nonprofit organizations that are available to take possession of depredating wild pig carcasses.

(d) With respect to elk, the following procedures shall apply:

(1) Prior to issuing a depredation permit pursuant to subdivision (a), the department shall do all of the following:

(A) Verify the actual or immediately threatened damage or destruction.

(B) Provide a written summary of corrective measures necessary to immediately alleviate the problem.

(C) Determine the viability of the local herd, and determine the minimum population level needed to maintain the herd.

(D) Ensure the permit will not reduce the local herd below the minimum.

(E) Work with affected landowners to develop measures to achieve long-term resolution, while maintaining viability of the herd.

(2) After completing the statewide elk management plan pursuant to Section 3952, the department shall use the information and methods contained in the plan to meet the requirements of subparagraphs (C), (D), and (E) of paragraph (1).

SEC. 2. Section 4188 of the Fish and Game Code is amended to read:

4188. (a) If a landowner or tenant applies for a permit under Section 4181 for wild pigs or wild turkeys, or under Section 4181.5 for deer, the department shall notify the landowner or tenant about available options for allowing access by licensed hunters, including, but not limited to, access authorized pursuant to Article 3 (commencing with Section 1570) of Chapter 5 of Division 2 to control wild pigs, wild turkeys, and deer.

(b) The commission, in lieu of a permit as described in subdivision (a), and with the consent of, or upon the request of, the landowner or tenant, under appropriate regulations, may authorize the issuance of permits to persons holding valid hunting licenses to take wild pigs, wild turkeys, or deer in sufficient numbers to stop the damage or threatened damage. Before issuing permits to licensed hunters, the department shall investigate and determine the number of permits necessary, the territory involved, the dates of the proposed hunt, the manner of issuing the permits, and the fee for the permit.

SEC. 3. Section 13220 of the Fish and Game Code is amended to read:

13220. Except as provided in Section 13230, the money in the Fish and Game Preservation Fund, commencing with the 2005–06 fiscal year, is available for expenditure, upon appropriation by the Legislature, for all of the following purposes:

(a) To the department for payment of refunds of sums determined by it to have been erroneously deposited in the fund, including, but not limited to, money received or collected in payment of fees, licenses, permits, taxes, fines, forfeitures, or services.

(b) To the department for expenditure in accordance with law for the payment of all necessary expenses incurred in carrying out this code and any other laws for the protection and preservation of birds, mammals, reptiles, and fish.

(c) To the commission for expenditure in accordance with law for the payment of the compensation and expenses of the commissioners and employees of the commission.

CHAPTER 481

An act to add and repeal Section 37700.1 of the Education Code, relating to schooldays.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2001.]

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

SECTION 1. Section 37700.1 is added to the Education Code, to read:

37700.1. (a) Notwithstanding any other law, the Death Valley Unified School District may operate one or more schools in its district on a four-day school week, if the district complies with the instructional time requirements specified in Section 37701 and the other requirements of this chapter.

(b) If the school district operates one or more schools on a four-day week pursuant to this section and the program for the school year provides less than the 180 days of instruction required under Section 46200, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for that fiscal year by the amount the school district would have received for the increase received pursuant to subdivision (a) of Section 46200, as adjusted in fiscal years subsequent to the 1984–85 fiscal year. If the school district operates one or more schools on a four-day school week pursuant to this section and the program provides less than the minimum instructional minutes required under Section 46201, the Superintendent of Public Instruction shall reduce the base revenue limit per unit of average daily attendance for that fiscal year in which the reduction occurs by the amount the school district would have received for the increase in the 1987–88 fiscal year base revenue limit per unit of average daily attendance pursuant to paragraph (6) of subdivision (b) of Section 42238, as adjusted in the 1987–88 fiscal year and fiscal years thereafter.

(c) If the school district has an exclusive bargaining representative, the school district may operate a school on a four-day school week pursuant to this section only if the district and the representative of each bargaining unit of district employees mutually agree to that operation in a memorandum of understanding.

(d) If a school operating on a four-day school week pursuant to this section fails to meet its Academic Performance Index growth target pursuant to Section 52052, the authority of that school to operate on a four-day school week is permanently revoked commencing with the beginning of the following school year.

(e) 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.

SEC. 2. The Legislature finds and declares that due to the unique circumstances regarding the Death Valley Unified School District, a general statute cannot be made applicable within the meaning of Section 16 of Article IV of the California Constitution. Therefore, the special legislation contained in this act is necessarily applicable only to the Death Valley Unified School District.

CHAPTER 482

An act to amend Sections 51871, 51872, 51873, and 51874 of the Education Code, relating to education technology.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. The Legislature finds and declares the following:

(a) The California Technology Assistance Project and the statewide educational technology services are making a significant impact on the extent to which educators make effective use of technology to support teaching and learning.

(b) Recent surveys of teachers and administrators who used California Technology Assistance Project and statewide educational technology services found these programs to be a major source of professional development and assistance for: (1) using electronic learning resources to help implement state content standards, (2) developing technology plans required for eligibility for federal and state technology funding, (3) selecting software and Web resources to support learning, (4) developing instructional plans to make optimal use of technology, and (5) promoting collaboration and coordination of technology initiatives across educational programs.

(c) Another study of the programs showed that significant support was provided that enabled schools across the state to increase their own capacity to plan and implement the extensive requirements of the federal No Child Left Behind Act that included identification of research-based materials, developing effective technology plans needed as a condition to receive federal funding, using technology to support management and use of student assessment data, improving teacher quality, and enabling

the delivery of professional development over high-speed telecommunications networks.

(d) It has been objectively documented that some technology services are more efficiently and effectively delivered at a statewide level. Examples of services proven to forward the integration of technology in schools include statewide services that assist educators in locating online standards-aligned learning resources, technology resources for school administrators, and technical support resources.

SEC. 2. Section 51871 of the Education Code is amended to read:

51871. (a) The California Technology Assistance Project shall be administered by the State Department of Education to provide a regionalized network of technical assistance to schools and school districts on the implementation of education technology as set forth in policies of the State Board of Education. The California Technology Assistance Project shall be composed of regional consortia that will work collaboratively with school districts and county offices of education to meet locally defined educational needs that can be effectively addressed with the use of technology, including, but not necessarily limited to, all of the following areas:

(1) Professional development.

(2) Electronic learning resources.

(3) Hardware.

(4) Telecommunications infrastructure.

(5) Technical assistance to school districts in developing a support system to operate and maintain an education technology infrastructure, including improving pupil recordkeeping and tracking related to pupil instruction.

(6) Coordination with and support for the funding and implementation of federal, state, and local programs.

(7) Funding.

(8) Technical assistance and information to support access, planning, and the use of high-speed telecommunications networks.

(9) Technology planning and implementation assistance to rural and technologically underserved school districts and county offices of education.

(b) The State Board of Education shall authorize grants to fund a school district or county office of education in each region of the California Technology Assistance Project to act as the lead agency to administer the services of that region. The term of a grant awarded pursuant to this section may not exceed three years. Grant funding may be awarded and received for subsequent terms of three years as provided in this section. The lead agency shall be chosen based on the extent to which it provides a plan that clearly documents or describes all of the following:

(1) Knowledge of technology to improve teaching and learning.

(2) Technology planning and technical assistance.

(3) Proven success in providing professional development in technology and curriculum integration.

(4) An ability to work collaboratively with school districts, county offices of education, and businesses in the region.

(5) The ability to deliver services specified in this article to all school districts and county offices of education in its region.

(6) The support of school districts and county offices of education for the regional lead agency application in the region.

(7) The capacity to assist schools to utilize high-speed telecommunications networks.

(8) Specific strategies for documenting and addressing the needs of rural schools and technologically underserved school districts and county offices of education.

(9) A plan for evaluating the implementation of, access to, use of, and local impact of, the services provided by the region.

(c) Funding to support the regional education technology services provided by the California Technology Assistance Project shall be provided through the annual Budget Act. To receive funding for the second and subsequent years of a grant awarded pursuant to subdivision (b), the lead agency shall submit an annual report to the State Board of Education for approval that describes the services provided, the persons served, and the funds expended for those services in the prior year. School districts and county offices of education within the California Technology Assistance Project region shall have an opportunity to comment on the report.

SEC. 3. Section 51872 of the Education Code is amended to read:

51872. (a) The State Department of Education shall administer this article. The duties of the State Department of Education shall include, but are not necessarily limited to, the following:

(1) Assisting the State Board of Education on education technology plans, policies, programs, and activities.

(2) Providing for the statewide coordination, planning, and evaluation of education technology programs and resources.

(3) Advancing the use of technology in the curriculum and in the administration of elementary and secondary schools.

(b) Funding shall be provided through the annual Budget Act to the Superintendent of Public Instruction to provide centralized statewide educational technology services that address locally defined needs and are more efficiently and effectively provided on a statewide basis. The statewide educational technology services to be supported by this statute shall include, but are not limited to, all of the following:

(1) Review of electronic learning resources including, but not limited to, software, online resources, and video, for alignment with the content standards adopted by the state board.

(2) Professional development focused on digital school leadership for educational administrators in the areas of data-driven decisionmaking, integrating technology into standards-based curriculum, technology planning, professional development needs of staff, financial planning for technology, and operations and maintenance.

(3) Access for schools to training, support, and other resources for technical professionals in California.

(c) The Superintendent of Public Instruction shall report annually, in writing, to the State Board of Education and the Legislature on the services provided, persons served, and the funds expended for those purposes in the prior year.

SEC. 4. Section 51873 of the Education Code is amended to read:

51873. School districts, county offices of education, and state special schools may apply to the State Board of Education to participate in grant programs related to education technology, including, but not limited to, professional development, research and development, and evaluation and dissemination of education technology resources.

SEC. 5. Section 51874 of the Education Code is amended to read:

51874. Sections 51871, 51872, 51873, this section, and the heading of this article shall remain in effect only until January 1, 2009, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2009, deletes or extends that date.

CHAPTER 483

An act to amend Sections 84104, 84203.5, 90000, 90003, and 91013.5 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 84104 of the Government Code is amended to read:

84104. It shall be the duty of each candidate, treasurer, and elected officer to maintain detailed accounts, records, bills, and receipts necessary to prepare campaign statements, to establish that campaign statements were properly filed, and to otherwise comply with the

provisions of this chapter. The detailed accounts, records, bills, and receipts shall be retained by the filer for a period specified by the commission. However, the commission shall not require retention of records for a period longer than the statute of limitations specified in Section 91000.5 or two years after the adoption of an audit report pursuant to Chapter 10 (commencing with Section 90000), whichever is less.

SEC. 2. Section 84203.5 of the Government Code is amended to read:

84203.5. (a) In addition to any campaign statements required by this article, if a candidate or committee has made independent expenditures totaling one thousand dollars ($1,000) or more in a calendar year to support or oppose a candidate, a measure or qualification of a measure, it shall file independent expenditure reports at the same time, covering the same periods, and in the places where the candidate or committee would be required to file campaign statements under this article, as if it were formed or existing primarily to support or oppose the candidate or measure or qualification of the measure. No independent expenditure report need be filed to cover a period for which there has been no activity to report.

(b) An independent expenditure report shall contain the following information:

(1) The name, street address, and telephone number of the candidate or committee making the expenditure and of the committee's treasurer, and the number assigned to the committee by the Secretary of State.

(2) If the report is related to a candidate, the full name of the candidate and the office and district for which the candidate seeks nomination or election. If the report is related to a measure or qualification of a measure, the number or letter of the measure, or if none has yet been assigned, a brief description of the subject matter of the measure, and the jurisdiction in which the measure is to be voted on or would be voted on if it qualified.

(3) The total amount of expenditures related to the candidate or measure during the period covered by the report made to persons who have received less than one hundred dollars ($100).

(4) The total amount of expenditures related to the candidate or measure during the period covered by the report made to persons who have received one hundred dollars ($100) or more.

(5) For each person to whom an expenditure of one hundred dollars ($100) or more related to the candidate or measure has been made during the period covered by the report and for each person who has provided consideration for an expenditure of one hundred dollars ($100) or more during the period covered by the report:

(A) His or her full name.

(B) His or her street address.

(C) If the person is a committee, the name of the committee, the number assigned to the committee by the Secretary of State, or if no number has been assigned, the full name and street address of the treasurer of the committee.

(D) The date of the expenditure.

(E) The amount of the expenditure.

(F) A brief description of the consideration for which each expenditure was made and the value of the consideration if less than the total amount of the expenditure.

(G) The cumulative amount of expenditures to such person.

(6) A list of all the filing officers with whom the committee filed its most recent campaign statement.

(c) Filing officers shall maintain paper reports filed pursuant to this section under the name of the candidate or measure supported or opposed by the independent expenditure.

SEC. 3. Section 90000 of the Government Code is amended to read:

90000. Except as provided in Section 90006, the Franchise Tax Board shall make audits and field investigations with respect to the following:

(a) Reports and statements filed with the Secretary of State under Chapter 4 (commencing with Section 84100), Chapter 5 (commencing with Section 85100), and Chapter 6 (commencing with Section 86100).

(b) Local candidates and their controlled committees selected for audit pursuant to subdivision (i) of Section 90001.

SEC. 4. Section 90003 of the Government Code is amended to read:

90003. In addition to the audits and investigations required by Section 90001, the Franchise Tax Board and the commission may make investigations and audits with respect to any reports or statements required by Chapter 4 (commencing with Section 84100), Chapter 5 (commencing with Section 85100), or Chapter 6 (commencing with Section 86100).

SEC. 5. Section 91013.5 of the Government Code is amended to read:

91013.5. (a) In addition to any other available remedies, the commission or the filing officer may bring a civil action and obtain a judgment in superior court for the purpose of collecting any unpaid monetary penalties, fees, or civil penalties imposed pursuant to this title. The action may be filed as a small claims, limited civil, or unlimited civil case, depending on the jurisdictional amount. The venue for this action shall be in the county where the monetary penalties, fees, or civil penalties were imposed by the commission or the filing officer. In order to obtain a judgment in a proceeding under this section, the commission

or filing officer shall show, following the procedures and rules of evidence as applied in ordinary civil actions, all of the following:

(1) That the monetary penalties, fees, or civil penalties were imposed following the procedures set forth in this title and implementing regulations.

(2) That the defendant or defendants in the action were notified, by actual or constructive notice, of the imposition of the monetary penalties, fees, or civil penalties.

(3) That a demand for payment has been made by the commission or the filing officer and full payment has not been received.

(b) A civil action brought pursuant to subdivision (a) shall be commenced within four years after the date on which the monetary penalty, fee, or civil penalty was imposed.

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

SEC. 7. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 484

An act to amend Sections 82019, 82030, 82048, 84106, and 84202.5 of the Government Code, relating to the Political Reform Act of 1974.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 82019 of the Government Code is amended to read:

82019. (a) ''Designated employee'' means any officer, employee, member, or consultant of any agency whose position with the agency:

(1) Is exempt from the state civil service system by virtue of subdivision (a), (c), (d), (e), (f), (g), or (m) of Section 4 of Article VII of the Constitution, unless the position is elective or solely secretarial, clerical, or manual.

(2) Is elective, other than an elective state office.

(3) Is designated in a Conflict of Interest Code because the position entails the making or participation in the making of decisions which may foreseeably have a material effect on any financial interest.

(4) Is involved as a state employee at other than a clerical or ministerial level in the functions of negotiating or signing any contract awarded through competitive bidding, in making decisions in conjunction with the competitive bidding process, or in negotiating, signing, or making decisions on contracts executed pursuant to Section 10122 of the Public Contract Code.

(b) (1) ''Designated employee'' does not include an elected state officer, any unsalaried member of any board or commission which serves a solely advisory function, any public official specified in Section 87200, and also does not include any unsalaried member of a nonregulatory committee, section, commission, or other such entity of the State Bar of California.

(2) ''Designated employee'' does not include a federal officer or employee serving in an official federal capacity on a state or local government agency. The state or local government agency shall annually obtain, and maintain in its files for public inspection, a copy of any public financial disclosure report filed by the federal officer or employee pursuant to federal law.

SEC. 2. Section 82030 of the Government Code is amended to read:

82030. (a) ''Income'' means, except as provided in subdivision (b), a payment received, including but not limited to any salary, wage, advance, dividend, interest, rent, proceeds from any sale, gift, including any gift of food or beverage, loan, forgiveness or payment of indebtedness received by the filer, reimbursement for expenses, per diem, or contribution to an insurance or pension program paid by any person other than an employer, and including any community property interest in the income of a spouse. Income also includes an outstanding loan. Income of an individual also includes a pro rata share of any income of any business entity or trust in which the individual or spouse owns, directly, indirectly or beneficially, a 10-percent interest or greater. ''Income,'' other than a gift, does not include income received from any source outside the jurisdiction and not doing business within the jurisdiction, not planning to do business within the jurisdiction, or not having done business within the jurisdiction during the two years prior to the time any statement or other action is required under this title.

(b) ''Income'' also does not include:

(1) Campaign contributions required to be reported under Chapter 4 (commencing with Section 84100).

(2) Salary and reimbursement for expenses or per diem, and social security, disability, or other similar benefit payments received from a

state, local, or federal government agency and reimbursement for travel expenses and per diem received from a bona fide nonprofit entity exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

(3) Any devise or inheritance.

(4) Interest, dividends, or premiums on a time or demand deposit in a financial institution, shares in a credit union or any insurance policy, payments received under any insurance policy, or any bond or other debt instrument issued by any government or government agency.

(5) Dividends, interest, or any other return on a security which is registered with the Securities and Exchange Commission of the United States government or a commodity future registered with the Commodity Futures Trading Commission of the United States government, except proceeds from the sale of these securities and commodities futures.

(6) Redemption of a mutual fund.

(7) Alimony or child support payments.

(8) Any loan or loans from a commercial lending institution which are made in the lender's regular course of business on terms available to members of the public without regard to official status.

(9) Any loan from or payments received on a loan made to an individual's spouse, child, parent, grandparent, grandchild, brother, sister, parent-in-law, brother-in-law, sister-in-law, nephew, niece, uncle, aunt, or first cousin, or the spouse of any such person, provided that a loan or loan payment received from any such person shall be considered income if he or she is acting as an agent or intermediary for any person not covered by this paragraph.

(10) Any indebtedness created as part of a retail installment or credit card transaction if made in the lender's regular course of business on terms available to members of the public without regard to official status.

(11) Payments received under a defined benefit pension plan qualified under Internal Revenue Code Section 401(a).

(12) Proceeds from the sale of securities registered with the Securities and Exchange Commission of the United States government or from the sale of commodities futures registered with the Commodity Futures Trading Commission of the United States government if the filer sells the securities or the commodities futures on a stock or commodities exchange and does not know or have reason to know the identity of the purchaser.

SEC. 3. Section 82048 of the Government Code is amended to read:

82048. (a) ''Public official'' means every member, officer, employee or consultant of a state or local government agency.

(b) Notwithstanding subdivision (a), ''public official'' does not include the following:

(1) A judge or court commissioner in the judicial branch of government.

(2) A member of the Board of Governors and designated employees of the State Bar of California.

(3) A member of the Judicial Council.

(4) A member of the Commission on Judicial Performance, provided that he or she is subject to the provisions of Article 2.5 (commencing with Section 6035) of Chapter 4 of Division 3 of the Business and Professions Code as provided in Section 6038 of that article.

(5) A federal officer or employee serving in an official federal capacity on a state or local government agency.

Section 84106 of the Government Code is amended to read:

84106. (a) Whenever identification of a sponsored committee is required by this title, the identification shall include the full name of the committee as required in its statement of organization.

(b) A sponsored committee shall use only one name in its statement of organization.

SEC. 5. Section 84202.5 of the Government Code is amended to read:

84202.5. (a) Any candidate or any committee pursuant to subdivision (a) of Section 82013 which makes contributions totaling ten thousand dollars ($10,000) or more in connection with an election, including a runoff election, shall file a supplemental preelection statement no later than 12 days before the election, for the period ending 17 days before the election. This statement shall be filed by guaranteed overnight delivery service or by personal delivery with each office with which the candidate or committee filing the statement is required to file its next campaign statement pursuant to Section 84215.

(b) This section shall not apply to candidates or committees during any semiannual period in which the candidate or committee is required to file preelection statements pursuant to Section 84200.5.

(c) If a candidate or committee makes contributions totaling ten thousand dollars ($10,000) or more in connection with an election and all of those contributions are reported pursuant to Section 84200 or 84202.7 on or before the closing date specified in subdivision (a), the candidate or committee shall not be required to file additional statements for that period pursuant to this section.

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

changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SEC. 7. The Legislature finds and declares that this bill furthers the purposes of the Political Reform Act of 1974 within the meaning of subdivision (a) of Section 81012 of the Government Code.

CHAPTER 485

An act to amend Sections 6046, 6047.1, 6047.2, 6047.3, 6047.35, 6047.4, 6047.5, 6047.13, and 6047.19 of, to add Sections 6047.20, 6047.21, 6047.22, 6047.23, 6047.24, 6047.25, 6047.26, 6047.27, 6047.28, and 6047.29 to, the Food and Agricultural Code, relating to pest control, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 6046 of the Food and Agricultural Code is amended to read:

6046. (a) There is hereby created in the Department of Food and Agriculture the Pierce's Disease Control Program.

(b) The Governor shall appoint a statewide coordinator, and the secretary shall provide an appropriate level of support staffing and logistical support for combating Pierce's disease and its vectors.

(c) (1) There is hereby created the Pierce's Disease Management Account in the Food and Agriculture Fund.

(2) The account shall consist of money transferred from the General Fund and money made available from federal, industry, and other sources. Money made available from federal, industry, and other sources shall be available for expenditure without regard to fiscal year for the purpose of combating Pierce's disease or its vectors. State general funds to be utilized for research shall only be expended when the secretary has received commitments from nonstate sources for at least a 25-percent match for each state dollar to be expended.

(d) The funds appropriated pursuant to this section to the Food and Agriculture Fund for the purpose of combating Pierce's disease and its vectors shall be used for costs that are incurred by the state or by local entities during and subsequent to the fiscal year of the act that added this section for the purpose of research and other efforts to combat Pierce's disease and its vectors.

(e) Whenever, in any county, funds are allocated by the Department of Food and Agriculture for local assistance regarding Pierce's disease and its vectors, those funds shall be made available to a local public entity, or local public entities, designated by that county's board of supervisors.

(f) Funds appropriated for local assistance shall not be allocated to the local public entity until the local public entity creates a Pierce's disease work plan that is approved by the department. Any funds allocated by the department to a designated local public entity shall be utilized for activities consistent with the local Pierce's disease work plan or other programs or work plans approved by the department. It shall be the responsibility of the designated local public entity to develop and implement the local Pierce's disease work plan. Upon request, the department shall provide consultation to the local public entity regarding its work plan.

(g) The work plan created by the designated local public entity shall include, but is not limited to, all of the following:

(1) In coordination with the department, the development and delivery of producer outreach information and training to local communities, groups, and individuals to organize their involvement with the work plan and to raise awareness regarding Pierce's disease and its vectors.

(2) In coordination with the department, the development and delivery of ongoing training of the designated local public entity's employees in the biology, survey, and treatment of Pierce's disease and its vectors.

(3) The identification within the designated local public entity of a local Pierce's disease coordinator.

(4) The proposed treatment of Pierce's disease and its vectors. Treatment programs shall comply with all applicable laws and regulations and shall be conducted in an environmentally responsible manner.

(5) In coordination with the department, the development and implementation of a data collection system to track and report new infestations of Pierce's disease and its vectors in a manner respectful of property and other rights of those affected.

(6) On an annual basis, while funds appropriated by this section are available for encumbrance, the department shall review the progress of each local public entity's activities regarding Pierce's disease and its vectors and, as needed, make recommendations regarding those activities to the local public entity.

(h) Notwithstanding Section 7550.5 of the Government Code, the department shall report to the Legislature on January 1, 2001, and each January 1 while this section is operative, regarding its expenditures,

progress, and ongoing priorities in combating Pierce's disease and its vectors in California.

(i) This article shall become inoperative on March 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute that is enacted before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 1.5. Section 6047.1 of the Food and Agricultural Code is amended to read:

6047.1. The Legislature finds and declares the following:

(a) The state's agricultural business economy could be seriously damaged if measures are not taken to prevent the transmittal of the plant killing bacterium that causes Pierce's disease and to contain its vectors, particularly the glassy-winged sharpshooter. Furthermore, progress made by winegrape growers and others in the adoption of integrated pest management and sustainable farming practices is threatened by these destructive pests and diseases.

(b) The funding to accomplish the purposes of this article shall be derived from an assessment on all grapes grown in California and crushed for wine, wine vinegar, juice concentrate, or beverage brandy.

(c) This article is not intended to establish a precedent, or to supersede, or to reduce or in any way alter government funding of the effort to combat Pierce's disease and other pests in this state.

(d) The purposes of this article are enhanced by the many and varied efforts of other agricultural commodities' industries to combat this bacterium and its vectors.

(e) This article is enacted for the protection of the winegrape industry and is also declared to be enacted in the public interest and in the exercise of the police power of the state for the purpose of protecting the health, peace, safety, and general welfare of the people of this state.

(f) The assessments shall be collected and expended for purposes consistent with Section 6046.

SEC. 2. Section 6047.2 of the Food and Agricultural Code is amended to read:

6047.2. For the purposes of this article, the following definitions shall govern its construction:

(a) ''Board'' means the Pierce's Disease and Glassy-winged Sharpshooter Board.

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

(c) ''Marketing season'' begins July 1 of each year and ends June 30 of the next year.

(d) ''Producer'' means a grower, including a cooperative, of grapes in California for wine, wine vinegar, juice, concentrate, or beverage brandy.

(e) ''Processor'' means a processor who crushes grapes in California for wine, wine vinegar, juice, concentrate, or beverage brandy.

(f) ''Person'' means a producer, processor, or any other entity that holds title to grapes subject to assessment.

(g) ''Purchase'' means the taking by sale, discount, negotiation, mortgage, pledge, lien, issue or reissue, gift, or any other voluntary transaction creating an interest in property. For purposes of this paragraph, ''sale'' shall consist of the passing of title from the seller to the buyer for a price.

(h) ''Purchased grapes'' means grapes grown in California, crushed by a processor for wine, wine vinegar, juice, concentrate, or beverage brandy, and purchased from a person considered a separate entity from the purchaser.

(i) ''Grapes not purchased'' means all other grapes grown in California and crushed by a processor for wine, wine vinegar, juice, concentrate, or beverage brandy, including, but not limited to, the following:

(1) Grapes grown by a person who is not considered a separate entity from the processor or who is a member of the processor cooperative.

(2) Grapes not purchased and crushed to the account of a person who retains ownership of the grapes.

(j) ''Secretary'' means the Secretary of Food and Agriculture.

SEC. 3. Section 6047.3 of the Food and Agricultural Code is amended to read:

6047.3. (a) Within 90 days after the effective date of this section, the secretary shall create in the department the Pierce's Disease and Glassy-winged Sharpshooter Board, which shall consist of at least 14, but not more than 15 members, of which eight shall be representatives of producers who are not also processors and six shall be representatives of processors who are also producers.

(b) The secretary shall appoint the members of the board from recommendations received from the industry. In making the appointments, the secretary shall select no more than one person from a producer or processor entity and shall ensure that there is representation on the board from each of the major grape production areas in the state.

(c) The secretary may appoint one additional member to the board, from nominees received from the board, who shall serve as the public member. The public member shall represent the interests of the public in all matters coming before the board and shall have the same voting and other rights and immunities as other members of the board.

(d) The secretary and other appropriate individuals, as determined by the board, shall be nonvoting ex officio members of the board.

(e) It is hereby declared, as a matter of legislative determination, that persons appointed to the board are intended to represent and further the interests of the industry concerned, and that this representation and furtherance is intended to serve the public interest. Accordingly, the Legislature finds that, with respect to persons who are appointed to the board, the industry concerned is tantamount to, and constitutes, the public generally within the meaning of Section 87103 of the Government Code.

SEC. 4. Section 6047.35 of the Food and Agricultural Code is amended to read:

6047.35. Notwithstanding any other provision of law, the secretary, upon the recommendation of the board, may contract with any nonprofit authoritative scientific body with expertise in agricultural issues in order to expedite research relating to the eradication of Pierce's disease.

SEC. 5. Section 6047.4 of the Food and Agricultural Code is amended to read:

6047.4. (a) The powers of the board shall be the following:

(1) Submit recommendations to the secretary on, but not limited to, the following:

(A) Selection of officers.

(B) Terms of office for board members.

(C) Annual assessment rate.

(D) Annual budget.

(E) Expenditures authorized under Section 6047.5.

(2) Receive money from the assessment and other sources.

(3) Adopt, amend, and rescind all proper and necessary bylaws and procedures.

(4) Coordinate its activities with the secretary's science advisory board and agricultural/governmental advisory task force.

(b) A majority of the members of the board shall constitute a quorum of the board. The vote of a majority of the members present at a meeting at which there is a quorum constitutes an act of the board, except for actions taken pursuant to subdivision (a) of Section 6047.7, which shall require a majority of the vote of the board. The board may continue to transact business at a meeting where a quorum is initially present, notwithstanding the withdrawal of members, provided any action is approved by the requisite majority of the required quorum.

(c) As authorized by the board, members of the board may receive per diem and mileage in accordance with the rules of the Department of Personnel Administration for attendance at meetings and other approved board activities.

SEC. 6. Section 6047.5 of the Food and Agricultural Code is amended to read:

6047.5. (a) Expenditure of the funds pursuant to this article shall be restricted to the following:

(1) Reasonable administrative expenses of the board and the department, subject to the limitation in Section 6047.12.

(2) The collection, enforcement, deposit, and handling of the assessments.

(3) Notwithstanding Section 6047.12, costs to conduct a referendum.

(4) Subject to subdivision (d) of Section 6047.1, research and other activities related to the transmittal of the plant killing Pierce's disease bacterium and its vectors, particularly the glassy-winged sharpshooter, including, but not limited to, research of integrated pest management and other sustainable industry practices. The disbursement of research funds collected pursuant to Section 6047.7 shall be on a competitive bid basis, shall be exempt from the requirements of Sections 12798 and 12798.6, and may be encumbered with existing resources beyond the termination date of this statute.

(b) Except as provided in subdivision (c), data and related information and materials produced during the course of research conducted pursuant to this article that are in the possession of the department, the board, or any entity engaged in research funded pursuant to this article, shall be confidential and shall not be released for any purpose, except to the extent that they are included in any final publication of research, or except when required by a court order after a hearing in a judicial proceeding involving this article.

(c) The restrictions in this section shall not apply to research conducted by the University of California or by other public agencies or public institutions that are subject to interagency agreements, except to the extent that they are consistent with policies of the entity engaged in research funded pursuant to this article on sponsored research and publication, which may allow for, among other things, a short period of review by the board in advance of publication.

(d) Processors subject to this article and expenditure of the funds collected pursuant to this article are subject to audit by the department.

SEC. 7. Section 6047.13 of the Food and Agricultural Code is amended to read:

6047.13. (a) All proprietary information obtained by the board or the department from producers, processors, or any other source, including, but not limited to, the name, addresses, and assessments collected from individual producers and processors in the possession of the board or the department, including processors' lists of their producers and the assessment of individual producers, is confidential and shall not be disclosed, except when required by a court order issued upon a showing of good cause and that the information is necessary to a judicial proceeding involving this article.

(b) Disclosure, as permitted under this section, shall be conducted in camera by the court.

(c) The court shall, in the court's discretion, issue a temporary order restraining a party or parties to a judicial proceeding involving this article from disseminating any proprietary information to the public or any other person not a party to that judicial proceeding.

(d) The temporary order shall terminate upon the entry of a final order, a judgment, or a dismissal of the action.

SEC. 8. Section 6047.19 of the Food and Agricultural Code is amended to read:

6047.19. (a) On or before December 31st of every other year, the secretary, after consultation with the board, shall report on the status of this chapter to the chairs of the policy and fiscal committees that have the appropriate subject matter jurisdiction in the Assembly and the Senate.

(b) The report shall include a financial accounting, including the distribution of industry assessments and any unexpended amount on deposit, of the department's efforts to contain Pierce's disease and its vectors.

(c) This article shall remain in effect only until March 1, 2011, and as of that date is repealed, unless a later enacted statute, that is enacted before March 1, 2011, deletes or extends that date.

SEC. 9. Section 6047.20 is added to the Food and Agricultural Code, to read:

6047.20. This article shall become inoperative, as of March 1, 2006, unless the secretary finds, in a referendum conducted by him or her, or a person designated by him or her, that a favorable vote has been given pursuant to this article.

SEC. 10. Section 6047.21 is added to the Food and Agricultural Code, to read:

6047.21. (a) No later than April 15, 2005, the secretary shall establish a list of those persons eligible to vote on the continued implementation of this article.

(b) Eligibility shall be limited to the producers, processors, and persons who paid the assessment on grapes crushed in the immediately preceding season.

(c) (1) In establishing the list, the secretary may require processors, producers, and others to submit the names, mailing addresses, and assessment values of all producers who paid the assessment on grapes crushed in the immediately preceding marketing season.

(2) The information required by the secretary shall be filed either with the annual assessment report or no later than 30 days following receipt of a written notice from the secretary requesting the information.

(d) Any producer whose name does not appear on the secretary's list may have his or her name added to the list by filing with the secretary a signed statement identifying himself or herself as a producer that paid an assessment during the most recent marketing season.

SEC. 11. Section 6047.22 is added to the Food and Agricultural Code, to read:

6047.22. For the purpose of voting in the referendum required in Section 6047.20, only a person required to pay the assessment pursuant to Section 6047.8 shall have the right to vote.

SEC. 12. Section 6047.23 is added to the Food and Agricultural Code, to read:

6047.23. In determining whether this article shall become inoperative, the secretary shall find that at least 40 percent of the total number of persons from the list established by the secretary participated in the referendum, and that either one of the following occurred:

(a) 65 percent or more of the persons who voted in the referendum voted in favor of this article, and the persons who voted paid a majority of the assessment dollars on grapes in the preceding marketing season that were paid by all the persons who voted in the referendum.

(b) A majority of the persons who voted in the referendum voted in favor of this article, and the persons who voted paid 65 percent or more of the assessment dollars on grapes in the preceding marketing season that were paid by all the persons who voted in the referendum.

SEC. 13. Section 6047.24 is added to the Food and Agricultural Code, to read:

6047.24. In determining whether the referendum is approved by producers pursuant to the provisions of this article, the secretary shall consider the vote in favor of the referendum of any nonprofit agricultural cooperative marketing association, which is authorized by its members so to assent, as being the assent, approval, or favor of the producers that are members of, or stockholders in, that nonprofit agricultural cooperative marketing association.

SEC. 13.5. Section 6047.25 is added to the Food and Agricultural Code, to read:

6047.25. The secretary shall establish a period in which to conduct the referendum that shall not be less than 10 days nor more than 60 days in duration. The secretary may prescribe additional procedures to conduct the referendum. If the initial period established is less than 60 days, the secretary may extend the period. However, the total referendum period may not exceed 60 days.

SEC. 14. Section 6047.26 is added to the Food and Agricultural Code, to read:

6047.26. Nonreceipt of a ballot shall not invalidate a referendum.

SEC. 15. Section 6047.27 is added to the Food and Agricultural Code, to read:

6047.27. (a) If the secretary finds that a favorable vote has not been given as provided in this article, this article shall become inoperative as of March 1, 2006.

(b) If the secretary finds that a favorable vote has been given as provided in this article, he or she shall certify and give notice of the favorable vote to all persons whose names and addresses may be on file with the secretary as provided in Section 6047.21.

SEC. 16. Section 6047.28 is added to the Food and Agricultural Code, to read:

6047.28. (a) The provisions of this article are severable.

(b) If any provision of this section or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 17. Section 6047.29 is added to the Food and Agricultural Code, to read:

6047.29. (a) The secretary shall appoint an advisory task force consisting of scientific experts, including, but not limited to, university researchers and agricultural representatives, for the purpose of advising the secretary on the control and management of Pierce's disease.

(b) Members of the advisory task force, or alternate members when acting as members, may be reimbursed, upon request, for necessary expenses incurred by them in the performance of their duties.

(c) This section shall remain in effect until March 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. 18. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to protect as soon as possible the winegrape industry from the plant killing Pierce's disease bacterium, and its vectors, it is necessary that this act take effect immediately.

CHAPTER 486

An act to amend Sections 1369, 1370, and 1370.01 of the Penal Code, relating to competency.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 1369 of the Penal Code is amended to read:

1369. A trial by court or jury of the question of mental competence shall proceed in the following order:

(a) The court shall appoint a psychiatrist or licensed psychologist, and any other expert the court may deem appropriate, to examine the defendant. In any case where the defendant or the defendant's counsel informs the court that the defendant is not seeking a finding of mental incompetence, the court shall appoint two psychiatrists, licensed psychologists, or a combination thereof. One of the psychiatrists or licensed psychologists may be named by the defense and one may be named by the prosecution. The examining psychiatrists or licensed psychologists shall evaluate the nature of the defendant's mental disorder, if any, the defendant's ability or inability to understand the nature of the criminal proceedings or assist counsel in the conduct of a defense in a rational manner as a result of a mental disorder and, if within the scope of their licenses and appropriate to their opinions, whether or not treatment with antipsychotic medication is medically appropriate for the defendant and whether antipsychotic medication is likely to restore the defendant to mental competence. If an examining psychologist is of the opinion that antipsychotic medication may be medically appropriate for the defendant and that the defendant should be evaluated by a psychiatrist to determine if antipsychotic medication is medically appropriate, the psychologist shall inform the court of this opinion and his or her recommendation as to whether a psychiatrist should examine the defendant. The examining psychiatrists or licensed psychologists shall also address the issues of whether the defendant has capacity to make decisions regarding antipsychotic medication and whether the defendant is a danger to self or others. If the defendant is examined by a psychiatrist and the psychiatrist forms an opinion as to whether or not treatment with antipsychotic medication is medically appropriate, the psychiatrist shall inform the court of his or her opinions as to the likely or potential side effects of the medication, the expected efficacy of the medication, and possible alternative treatments. If it is suspected the defendant is developmentally disabled, the court shall appoint the director of the regional center for the developmentally disabled established under Division 4.5 (commencing with Section 4500) of the Welfare and Institutions Code, or the designee of the director, to examine the defendant. The court may order the developmentally disabled defendant to be confined for examination in a residential facility or state hospital.

The regional center director shall recommend to the court a suitable residential facility or state hospital. Prior to issuing an order pursuant to

this section, the court shall consider the recommendation of the regional center director. While the person is confined pursuant to order of the court under this section, he or she shall be provided with necessary care and treatment.

(b) (1) The counsel for the defendant shall offer evidence in support of the allegation of mental incompetence.

(2) If the defense declines to offer any evidence in support of the allegation of mental incompetence, the prosecution may do so.

(c) The prosecution shall present its case regarding the issue of the defendant's present mental competence.

(d) Each party may offer rebutting testimony, unless the court, for good reason in furtherance of justice, also permits other evidence in support of the original contention.

(e) When the evidence is concluded, unless the case is submitted without final argument, the prosecution shall make its final argument and the defense shall conclude with its final argument to the court or jury.

(f) In a jury trial, the court shall charge the jury, instructing them on all matters of law necessary for the rendering of a verdict. It shall be presumed that the defendant is mentally competent unless it is proved by a preponderance of the evidence that the defendant is mentally incompetent. The verdict of the jury shall be unanimous.

SEC. 2. Section 1370 of the Penal Code is amended to read:

1370. (a) (1) (A) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced.

(B) If the defendant is found mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent.

(i) In the meantime, the court shall order that the mentally incompetent defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered, or to any other available public or private treatment facility approved by the community program director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in Section 1600.

(ii) However, if the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290, the prosecutor shall determine whether the defendant previously has been found mentally incompetent to stand trial pursuant to this chapter on a charge of a Section 290 offense, or whether the defendant is currently the subject of a pending Section 1368 proceeding arising out of a charge of a Section 290 offense. If either determination is made, the prosecutor shall so notify the court and defendant in writing. After this notification, and opportunity for hearing,

the court shall order that the defendant be delivered by the sheriff to a state hospital or other secure treatment facility for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iii) If the action against the defendant who has been found mentally incompetent is on a complaint charging a felony offense specified in Section 290 and the defendant has been denied bail pursuant to subdivision (b) of Section 12 of Article I of the California Constitution because the court has found, based upon clear and convincing evidence, a substantial likelihood that the person's release would result in great bodily harm to others, the court shall order that the defendant be delivered by the sheriff to a state hospital for the care and treatment of the mentally disordered unless the court makes specific findings on the record that an alternative placement would provide more appropriate treatment for the defendant and would not pose a danger to the health and safety of others.

(iv) The clerk of the court shall notify the Department of Justice in writing of any finding of mental incompetence with respect to a defendant who is subject to clause (ii) or (iii) for inclusion in his or her state summary criminal history information.

(C) Upon the filing of a certificate of restoration to competence, the court shall order that the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the community program director or a designee.

(D) A defendant charged with a violent felony may not be delivered to a state hospital or treatment facility pursuant to this subdivision unless the state hospital or treatment facility has a secured perimeter or a locked and controlled treatment facility, and the judge determines that the public safety will be protected.

(E) For purposes of this paragraph, ''violent felony'' means an offense specified in subdivision (c) of Section 667.5.

(F) A defendant charged with a violent felony may be placed on outpatient status, as specified in Section 1600, only if the court finds that the placement will not pose a danger to the health or safety of others.

(2) Prior to making the order directing that the defendant be confined in a state hospital or other treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the community program director or a designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a state hospital or to any other treatment facility. No person

shall be admitted to a state hospital or other treatment facility or placed on outpatient status under this section without having been evaluated by the community program director or a designee.

(B) The court shall hear and determine whether the defendant, with advice of his or her counsel, consents to the administration of antipsychotic medication, and shall proceed as follows:

(i) If the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with this subdivision regarding whether antipsychotic medication shall be administered involuntarily.

(ii) If the defendant does not consent to the administration of medication, the court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(iii) If the court finds any of the conditions described in clause (ii) to be true, the court shall issue an order authorizing the treatment facility to involuntarily administer antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist. The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (ii) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (ii) and does not meet the criteria under subclause (II) of clause (ii).

(iv) In all cases, the treating hospital, facility or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(v) Any report made pursuant to paragraph (1) of subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the Patients' Rights Advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (i) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (ii) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks

capacity to make decisions regarding antipsychotic medication as specified in subclause (I) of clause (ii) of subparagraph (B), or that the defendant is a danger to others as specified in subclause (II) of clause (ii) of subparagraph (B), the committing court shall be notified of this, including an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide notice to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered in the manner described in subparagraph (B).

(3) When the court orders that the defendant be confined in a state hospital or other public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the state hospital or other treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court-ordered psychiatric examination or evaluation reports.

(G) The community program director's placement recommendation report.

(H) Records of any finding of mental incompetence pursuant to this chapter arising out of a complaint charging a felony offense specified in Section 290 or any pending Section 1368 proceeding arising out of a charge of a Section 290 offense.

(4) When the defendant is committed to a treatment facility pursuant to clause (i) of subparagraph (B) of paragraph (1) or the court makes the findings specified in clause (ii) or (iii) of subparagraph (B) of paragraph (1) to assign the defendant to a treatment facility other than a state hospital or other secure treatment facility, the court shall order that notice be given to the appropriate law enforcement agency or agencies having local jurisdiction at the site of the placement facility of any finding of mental incompetence pursuant to this chapter arising out of a charge of a Section 290 offense.

(5) When directing that the defendant be confined in a state hospital pursuant to this subdivision, the court shall select the hospital in

accordance with the policies established by the State Department of Mental Health.

(6) (A) If the defendant is committed or transferred to a state hospital pursuant to this section, the court may, upon receiving the written recommendation of the medical director of the state hospital and the community program director that the defendant be transferred to a public or private treatment facility approved by the community program director, order the defendant transferred to that facility. If the defendant is committed or transferred to a public or private treatment facility approved by the community program director, the court may, upon receiving the written recommendation of the community program director, transfer the defendant to a state hospital or to another public or private treatment facility approved by the community program director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of the Lanterman-Petris-Short Act (Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code). Where either the defendant or the prosecutor chooses to contest either kind of order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the community program director or a designee.

(B) If the defendant is initially committed to a state hospital or secure treatment facility pursuant to clause (ii) or (iii) of subparagraph (B) of paragraph (1) and is subsequently transferred to any other facility, copies of the documents specified in paragraph (3) shall be taken with the defendant to each subsequent facility to which the defendant is transferred. The transferring facility shall also notify the appropriate law enforcement agency or agencies having local jurisdiction at the site of the new facility that the defendant is a person subject to clause (ii) or (iii) of subparagraph (B) of paragraph (1).

(b) (1) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the state hospital or other treatment facility to which the defendant is confined shall make a written report to the court and the community program director for the county or region of commitment, or a designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the community program director concerning the defendant's

progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the community program director shall report to the court on this matter. If the defendant has not recovered mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the state hospital or other treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the community program director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the community program director on the defendant's progress toward recovery, and the community program director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the community program director or a designee.

(2) Any defendant who has been committed or has been on outpatient status for 18 months and is still hospitalized or on outpatient status shall be returned to the committing court where a hearing shall be held pursuant to the procedures set forth in Section 1369. The court shall transmit a copy of its order to the community program director or a designee.

(3) If it is determined by the court that no treatment for the defendant's mental impairment is being conducted, the defendant shall be returned to the committing court. The court shall transmit a copy of its order to the community program director or a designee.

(4) At each review by the court specified in this subdivision, the court shall determine if the security level of housing and treatment is appropriate and may make an order in accordance with its determination.

(c) (1) At the end of three years from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the information, indictment, or misdemeanor complaint, whichever is shorter, a defendant who has not recovered mental competence shall be returned to the committing court. The court shall notify the community program director or a designee of the return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to paragraph (1) or (2) of subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (B) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the community program director or a designee and shall notify the community program director or a designee of the outcome of the proceedings.

(3) Where the defendant is confined in a treatment facility, a copy of any report to the committing court regarding the defendant's progress toward recovery of mental competence shall be provided by the committing court to the prosecutor and to the defense counsel.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit a copy of the order of dismissal to the community program director or a designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings that may be appropriate under the Lanterman-Petris-Short Act, Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

(f) As used in this chapter, ''community program director'' means the person, agency, or entity designated by the State Department of Mental Health pursuant to Section 1605 of this code and Section 4360 of the Welfare and Institutions Code.

(g) For the purpose of this section, ''secure treatment facility'' shall not include, except for state mental hospitals, state developmental centers, and correctional treatment facilities, any facility licensed pursuant to Chapter 2 (commencing with Section 1250) of, Chapter 3 (commencing with Section 1500) of, or Chapter 3.2 (commencing with Section 1569) of, Division 2 of the Health and Safety Code, or any community board and care facility.

SEC. 3. Section 1370.01 of the Penal Code is amended to read:

1370.01. (a) (1) If the defendant is found mentally competent, the criminal process shall resume, the trial on the offense charged shall proceed, and judgment may be pronounced. If the defendant is found

mentally incompetent, the trial or judgment shall be suspended until the person becomes mentally competent, and the court shall order that (A) in the meantime, the defendant be delivered by the sheriff to an available public or private treatment facility approved by the county mental health director that will promote the defendant's speedy restoration to mental competence, or placed on outpatient status as specified in this section, and (B) upon the filing of a certificate of restoration to competence, the defendant be returned to court in accordance with Section 1372. The court shall transmit a copy of its order to the county mental health director or his or her designee.

(2) Prior to making the order directing that the defendant be confined in a treatment facility or placed on outpatient status, the court shall proceed as follows:

(A) The court shall order the county mental health director or his or her designee to evaluate the defendant and to submit to the court within 15 judicial days of the order a written recommendation as to whether the defendant should be required to undergo outpatient treatment, or committed to a treatment facility. No person shall be admitted to a treatment facility or placed on outpatient status under this section without having been evaluated by the county mental health director or his or her designee. No person shall be admitted to a state hospital under this section unless the county mental health director finds that there is no less restrictive appropriate placement available and the county mental health director has a contract with the State Department of Mental Health for these placements.

(B) The court shall hear and determine whether the defendant, with advice of his or her counsel, consents to the administration of antipsychotic medication, and shall proceed as follows:

(i) If the defendant, with advice of his or her counsel, consents, the court order of commitment shall include confirmation that antipsychotic medication may be given to the defendant as prescribed by a treating psychiatrist pursuant to the defendant's consent. The commitment order shall also indicate that, if the defendant withdraws consent for antipsychotic medication, after the treating psychiatrist complies with the provisions of subparagraph (C), the defendant shall be returned to court for a hearing in accordance with this subdivision regarding whether antipsychotic medication shall be administered involuntarily.

(ii) If the defendant does not consent to the administration of medication, the court shall hear and determine whether any of the following is true:

(I) The defendant lacks capacity to make decisions regarding antipsychotic medication, the defendant's mental disorder requires medical treatment with antipsychotic medication, and, if the defendant's mental disorder is not treated with antipsychotic medication, it is

probable that serious harm to the physical or mental health of the patient will result. Probability of serious harm to the physical or mental health of the defendant requires evidence that the defendant is presently suffering adverse effects to his or her physical or mental health, or the defendant has previously suffered these effects as a result of a mental disorder and his or her condition is substantially deteriorating. The fact that a defendant has a diagnosis of a mental disorder does not alone establish probability of serious harm to the physical or mental health of the defendant.

(II) The defendant is a danger to others, in that the defendant has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another while in custody, or the defendant had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm on another that resulted in his or her being taken into custody, and the defendant presents, as a result of mental disorder or mental defect, a demonstrated danger of inflicting substantial physical harm on others. Demonstrated danger may be based on an assessment of the defendant's present mental condition, including a consideration of past behavior of the defendant within six years prior to the time the defendant last attempted to inflict, inflicted, or threatened to inflict substantial physical harm on another, and other relevant evidence.

(III) The people have charged the defendant with a serious crime against the person or property; involuntary administration of antipsychotic medication is substantially likely to render the defendant competent to stand trial; the medication is unlikely to have side effects that interfere with the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner; less intrusive treatments are unlikely to have substantially the same results; and antipsychotic medication is in the patient's best medical interest in light of his or her medical condition.

(iii) If the court finds any of the conditions described in clause (ii) to be true, the court shall issue an order authorizing the treatment facility to involuntarily administer antipsychotic medication to the defendant when and as prescribed by the defendant's treating psychiatrist. The court shall not order involuntary administration of psychotropic medication under subclause (III) of clause (ii) unless the court has first found that the defendant does not meet the criteria for involuntary administration of psychotropic medication under subclause (I) of clause (ii) and does not meet the criteria under subclause (II) of clause (ii).

(iv) In all cases, the treating hospital, facility, or program may administer medically appropriate antipsychotic medication prescribed by a psychiatrist in an emergency as described in subdivision (m) of Section 5008 of the Welfare and Institutions Code.

(v) Any report made pursuant to subdivision (b) shall include a description of any antipsychotic medication administered to the defendant and its effects and side effects, including effects on the defendant's appearance or behavior that would affect the defendant's ability to understand the nature of the criminal proceedings or to assist counsel in the conduct of a defense in a reasonable manner. During the time the defendant is confined in a state hospital or other treatment facility or placed on outpatient status, either the defendant or the people may request that the court review any order made pursuant to this subdivision. The defendant, to the same extent enjoyed by other patients in the state hospital or other treatment facility, shall have the right to contact the Patients' Rights Advocate regarding his or her rights under this section.

(C) If the defendant consented to antipsychotic medication as described in clause (i) of subparagraph (B), but subsequently withdraws his or her consent, or, if involuntary antipsychotic medication was not ordered pursuant to clause (ii) of subparagraph (B), and the treating psychiatrist determines that antipsychotic medication has become medically necessary and appropriate, the treating psychiatrist shall make efforts to obtain informed consent from the defendant for antipsychotic medication. If informed consent is not obtained from the defendant, and the treating psychiatrist is of the opinion that the defendant lacks capacity to make decisions regarding antipsychotic medication as specified in subclause (I) of clause (ii) of subparagraph (B), or that the defendant is a danger to others as specified in subclause (II) of clause (ii) of subparagraph (B), the committing court shall be notified of this, including an assessment of the current mental status of the defendant and the opinion of the treating psychiatrist that involuntary antipsychotic medication has become medically necessary and appropriate. The court shall provide copies of the report to the prosecuting attorney and to the attorney representing the defendant and shall set a hearing to determine whether involuntary antipsychotic medication should be ordered in the manner described in subparagraph (B).

(3) When the court, after considering the placement recommendation of the county mental health director required in paragraph (2), orders that the defendant be confined in a public or private treatment facility, the court shall provide copies of the following documents which shall be taken with the defendant to the treatment facility where the defendant is to be confined:

(A) The commitment order, including a specification of the charges.

(B) A computation or statement setting forth the maximum term of commitment in accordance with subdivision (c).

(C) A computation or statement setting forth the amount of credit for time served, if any, to be deducted from the maximum term of commitment.

(D) State summary criminal history information.

(E) Any arrest reports prepared by the police department or other law enforcement agency.

(F) Any court-ordered psychiatric examination or evaluation reports.

(G) The county mental health director's placement recommendation report.

(4) A person subject to commitment under this section may be placed on outpatient status under the supervision of the county mental health director or his or her designee by order of the court in accordance with the procedures contained in Title 15 (commencing with Section 1600) except that where the term ''community program director'' appears the term ''county mental health director'' shall be substituted.

(5) If the defendant is committed or transferred to a public or private treatment facility approved by the county mental health director, the court may, upon receiving the written recommendation of the county mental health director, transfer the defendant to another public or private treatment facility approved by the county mental health director. In the event of dismissal of the criminal charges before the defendant recovers competence, the person shall be subject to the applicable provisions of Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code. Where either the defendant or the prosecutor chooses to contest the order of transfer, a petition may be filed in the court for a hearing, which shall be held if the court determines that sufficient grounds exist. At the hearing, the prosecuting attorney or the defendant may present evidence bearing on the order of transfer. The court shall use the same standards as are used in conducting probation revocation hearings pursuant to Section 1203.2.

Prior to making an order for transfer under this section, the court shall notify the defendant, the attorney of record for the defendant, the prosecuting attorney, and the county mental health director or his or her designee.

(b) Within 90 days of a commitment made pursuant to subdivision (a), the medical director of the treatment facility to which the defendant is confined shall make a written report to the court and the county mental health director or his or her designee, concerning the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, the outpatient treatment staff shall make a written report to the county mental health director concerning the defendant's progress toward recovery of mental competence. Within 90 days of placement on outpatient status, the county mental health director shall report to the court on this matter. If the defendant has not recovered

mental competence, but the report discloses a substantial likelihood that the defendant will regain mental competence in the foreseeable future, the defendant shall remain in the treatment facility or on outpatient status. Thereafter, at six-month intervals or until the defendant becomes mentally competent, where the defendant is confined in a treatment facility, the medical director of the hospital or person in charge of the facility shall report in writing to the court and the county mental health director or a designee regarding the defendant's progress toward recovery of mental competence. Where the defendant is on outpatient status, after the initial 90-day report, the outpatient treatment staff shall report to the county mental health director on the defendant's progress toward recovery, and the county mental health director shall report to the court on this matter at six-month intervals. A copy of these reports shall be provided to the prosecutor and defense counsel by the court. If the report indicates that there is no substantial likelihood that the defendant will regain mental competence in the foreseeable future, the committing court shall order the defendant to be returned to the court for proceedings pursuant to paragraph (2) of subdivision (c). The court shall transmit a copy of its order to the county mental health director or his or her designee.

(c) (1) If, at the end of one year from the date of commitment or a period of commitment equal to the maximum term of imprisonment provided by law for the most serious offense charged in the misdemeanor complaint, whichever is shorter, the defendant has not recovered mental competence, the defendant shall be returned to the committing court. The court shall notify the county mental health director or his or her designee of the return and of any resulting court orders.

(2) Whenever any defendant is returned to the court pursuant to subdivision (b) or paragraph (1) of this subdivision and it appears to the court that the defendant is gravely disabled, as defined in subparagraph (A) of paragraph (1) of subdivision (h) of Section 5008 of the Welfare and Institutions Code, the court shall order the conservatorship investigator of the county of commitment of the defendant to initiate conservatorship proceedings for the defendant pursuant to Chapter 3 (commencing with Section 5350) of Part 1 of Division 5 of the Welfare and Institutions Code. Any hearings required in the conservatorship proceedings shall be held in the superior court in the county that ordered the commitment. The court shall transmit a copy of the order directing initiation of conservatorship proceedings to the county mental health director or his or her designee and shall notify the county mental health director or his or her designee of the outcome of the proceedings.

(d) The criminal action remains subject to dismissal pursuant to Section 1385. If the criminal action is dismissed, the court shall transmit

a copy of the order of dismissal to the county mental health director or his or her designee.

(e) If the criminal charge against the defendant is dismissed, the defendant shall be released from any commitment ordered under this section, but without prejudice to the initiation of any proceedings which may be appropriate under Part 1 (commencing with Section 5000) of Division 5 of the Welfare and Institutions Code.

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

CHAPTER 487

An act to amend Section 19930 of the Business and Professions Code, relating to gambling.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

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

SECTION 1. Section 19930 of the Business and Professions Code is amended to read:

19930. (a) The division shall make appropriate investigations as follows:

(1) Determine whether there has been any violation of this chapter or any regulations adopted thereunder.

(2) Determine any facts, conditions, practices, or matters that it may deem necessary or proper to aid in the enforcement of this chapter or any regulation adopted thereunder.

(3) To aid in adopting regulations.

(4) To secure information as a basis for recommending legislation relating to this chapter.

(b) If, after any investigation, the division is satisfied that a license, permit, finding of suitability, or approval should be suspended or revoked, it shall file an accusation with the commission in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(c) In addition to any action that the commission may take against a license, permit, finding of suitability, or approval, the commission may also require the payment of fines or penalties. However, no fine imposed shall exceed twenty thousand dollars ($20,000) for each separate violation of any provision of this chapter or any regulation adopted thereunder.

(d) In any case in which the administrative law judge recommends that the commission revoke, suspend, or deny a license, the administrative law judge may, upon presentation of suitable proof, order the licensee or applicant for a license to pay the division the reasonable costs of the investigation and prosecution of the case.

(1) The costs assessed pursuant to this subdivision shall be fixed by the administrative law judge and may not be increased by the commission. When the commission does not adopt a proposed decision and remands the case to the administrative law judge, the administrative law judge may not increase the amount of any costs assessed in the proposed decision.

(2) The division may enforce the order for payment in the superior court in the county in which the administrative hearing was held. The right of enforcement shall be in addition to any other rights that the division may have as to any licensee directed to pay costs.

(3) In any judicial action for the recovery of costs, proof of the commission's decision shall be conclusive proof of the validity of the order of payment and the terms for payment.

(e) Notwithstanding any other provision of law, all costs recovered under this section shall be deposited in the fines and penalties account, a special account described in subdivision (a) of Section 19950.

(f) For purposes of this section, ''costs'' include costs incurred for any of the following:

(1) The investigation of the case by the division.

(2) The preparation and prosecution of the case by the Office of the Attorney General.

CHAPTER 488

An act to amend Section 1374.58 of the Health and Safety Code, and to amend Section 10121.7 of, and to add Section 381.5 to, the Insurance Code, relating to domestic partners.

[Approved by Governor September 13, 2004. Filed with Secretary of State September 13, 2004.]

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

SECTION 1. This act shall be known and may be cited as the California Insurance Equality Act.

SEC. 2. Section 1374.58 of the Health and Safety Code is amended to read:

1374.58. (a) A group health care service plan that provides hospital, medical, or surgical expense benefits shall provide equal coverage to employers or guaranteed associations, as defined in Section 1357, for the registered domestic partner of an employee or subscriber to the same extent, and subject to the same terms and conditions, as provided to a spouse of the employee or subscriber, and shall inform employers and guaranteed associations of this coverage. A plan may not offer or provide coverage for a registered domestic partner that is not equal to the coverage provided to the spouse of an employee or subscriber.

(b) If an employer or guaranteed association has purchased coverage for spouses and registered domestic partners pursuant to subdivision (a), a health care service plan that provides hospital, medical, or surgical expense benefits for employees or subscribers and their spouses shall enroll, upon application by the employer or group administrator, a registered domestic partner of an employee or subscriber in accordance with the terms and conditions of the group contract that apply generally to all spouses under the plan, including coordination of benefits.

(c) For purposes of this section, the term ''domestic partner'' shall have the same meaning as that term is used in Section 297 of the Family Code.

(d) (1) A health care service plan may require that the employee or subscriber verify the status of the domestic partnership by providing to the plan a copy of a valid Declaration of Domestic Partnership filed with the Secretary of State pursuant to Section 298 of the Family Code or an equivalent document issued by a local agency of this state, another state, or a local agency of another state under which the partnership was created. The plan may also require that the employee or subscriber notify the plan upon the termination of the domestic partnership.

(2) Notwithstanding paragraph (1), a health care service plan may require the information described in that paragraph only if it also requests from the employee or subscriber whose spouse is provided coverage, verification of marital status and notification of dissolution of the marriage.

(e) Nothing in this section shall be construed to expand the requirements of Section 4980B of Title 26 of the United States Code, Section 1161, and following, of Title 29 of the United States Code, or Section 300bb-1, and following, of Title 42 of the United States Code,

as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as those provisions may be later amended.

(f) A plan subject to this section that is issued, amended, delivered, or renewed in this state on or after January 2, 2005, shall be deemed to provide coverage for registered domestic partners that is equal to the coverage provided to a spouse of an employee or subscriber.

SEC. 3. Section 381.5 is added to the Insurance Code, to read:

381.5. (a) Every policy issued, amended, delivered, or renewed in this state shall provide coverage for the registered domestic partner of an insured or policyholder that is equal to, and subject to the same terms and conditions as, the coverage provided to a spouse of an insured or policyholder. A policy may not offer or provide coverage for a registered domestic partner if it is not equal to the coverage provided for the spouse of an insured or policyholder. This subdivision applies to all forms of insurance regulated by this code.

(b) A policy subject to this section that is issued, amended, delivered, or renewed in this state on or after January 1, 2005, shall be deemed to provide coverage for registered domestic partners that is equal to the coverage provided to a spouse of an insured or policyholder.

(c) It is the intent of the Legislature that, for purposes of this section, ''terms,'' ''conditions,'' and ''coverage'' do not include instances of differential treatment of domestic partners and spouses under federal law.

SEC. 4. Section 10121.7 of the Insurance Code is amended to read:

10121.7. (a) A policy of group health insurance that provides hospital, medical, or surgical expense benefits shall provide equal coverage to employers or guaranteed associations, as defined in Section 10700, for the registered domestic partner of an employee, insured, or policyholder to the same extent, and subject to the same terms and conditions, as provided to a spouse of the employee, insured, or policyholder, and shall inform employers and guaranteed associations of this coverage. A policy may not offer or provide coverage for a registered domestic partner that is not equal to the coverage provided to the spouse of an employee, insured, or policyholder.

(b) If an employer or guaranteed association has purchased coverage for spouses and registered domestic partners pursuant to subdivision (a), a health insurer that provides hospital, medical, or surgical expense benefits for employees, insureds, or policyholders and their spouses shall enroll, upon application by the employer or group administrator, a registered domestic partner of the employee, insured, or policyholder in accordance with the terms and conditions of the group contract that apply generally to all spouses under the policy, including coordination of benefits.

(c) For purposes of this section, the term ''domestic partner'' shall have the same meaning as that term is used in Section 297 of the Family Code.

(d) (1) A policy of group health insurance may require that the employee, insured, or policyholder verify the status of the domestic partnership by providing to the insurer a copy of a valid Declaration of Domestic Partnership filed with the Secretary of State pursuant to Section 298 of the Family Code or an equivalent document issued by a local agency of this state, another state, or a local agency of another state under which the partnership was created. The policy may also require that the employee, insured, or policyholder notify the insurer upon the termination of the domestic partnership.

(2) Notwithstanding paragraph (1), a policy may require the information described in that paragraph only if it also requests from the employee, insured, or policyholder whose spouse is provided coverage, verification of marital status and notification of dissolution of the marriage.

(e) Nothing in this section shall be construed to expand the requirements of Section 4980B of Title 26 of the United States Code, Section 1161, and following, of Title 29 of the United States Code, or Section 300bb-1, and following, of Title 42 of the United States Code, as added by the Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272), and as those provisions may be later amended.

(f) A group health insurance policy subject to this section that is issued, amended, delivered, or renewed in this state on or after January 2, 2005, shall be deemed to provide coverage for registered domestic partners that is equal to the coverage provided to a spouse of an employee, insured, or policyholder.

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 489

An act to add Section 1366.3 to the Health and Safety Code, and to add Section 10127.18 to the Insurance Code, relating to health care.

[Approved by Governor September 13, 2004. Filed with
Secretary of State September 13, 2004.]

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

SECTION 1. Section 1366.3 is added to the Health and Safety Code, to read:

1366.3. (a) On and after January 1, 2005, a health care service plan issuing individual plan contracts that ceases to offer individual coverage in this state shall offer coverage to the subscribers who had been covered by those contracts at the time of withdrawal under the same terms and conditions as provided in paragraph (3) of subdivision (a), paragraphs (2) to (4), inclusive, of subdivision (b), subdivisions (c) to (e), inclusive, and subdivision (h) of Section 1373.6.

(b) A health care service plan that ceases to offer individual coverage in a service area shall offer the coverage required by subdivision (a) to subscribers who had been covered by those contracts at the time of withdrawal, if the plan continues to offer group coverage in that service area. This subdivision shall not apply to coverage provided pursuant to a preferred provider organization.

(c) The department may adopt regulations to implement this section.

(d) This section shall not apply when a plan participating in Medi-Cal, Healthy Families, Access for Infants and Mothers, or any other contract between the plan and a government entity no longer contracts with the government entity to provide health coverage in the state, or a specified area of the state, nor shall this section apply when a plan ceases entirely to market, offer, and issue any and all forms of coverage in any part of this state after the effective date of this section.

SEC. 2. Section 10127.18 is added to the Insurance Code, to read:

10127.18. (a) On and after January 1, 2005, a health insurer issuing individual policies of health insurance that ceases to offer individual coverage in this state shall offer coverage to the policyholders who had been covered by those policies at the time of withdrawal under the same terms and conditions as provided in paragraph (3) of subdivision (a), paragraphs (2) to (4), inclusive, of subdivision (b), subdivisions (c) to (e), inclusive, and subdivision (h) of Section 12682.1.

(b) The department may adopt regulations to implement this section.

(c) This section shall not apply when a plan participating in Medi-Cal, Healthy Families, Access for Infants and Mothers, or any other contract between the plan and a government entity no longer contracts with the government entity to provide health coverage in the state, or a specified area of the state, nor shall this section apply when a plan ceases entirely to market, offer, and issue any and all forms of coverage in any part of this state after the effective date of 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 490

An act to amend Section 1877.1 of the Insurance Code, and to amend Section 1543 of the Penal Code, relating to insurance fraud.

[Approved by Governor September 13, 2004. Filed with Secretary of State September 13, 2004.]

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, any city attorney whose duties include criminal prosecutions, any law enforcement agency investigating workers' compensation fraud, the office of the Attorney General, the Department of Insurance, the Department of Industrial Relations, the Employment Development Department, the Department of Corrections, 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 1543 of the Penal Code is amended to read:

1543. (a) Records of the identity, diagnosis, prognosis, or treatment of any patient maintained by a health care facility which are not privileged records required to be secured by the special master procedure in Section 1524, or records required by law to be confidential, shall only be disclosed to law enforcement agencies pursuant to this section:

(1) In accordance with the prior written consent of the patient; or

(2) If authorized by an appropriate order of a court of competent jurisdiction in the county where the records are located, granted after application showing good cause therefor. In assessing good cause, the court:

(A) Shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services;

(B) Shall determine that there is a reasonable likelihood that the records in question will disclose material information or evidence of substantial value in connection with the investigation or prosecution; or

(3) By a search warrant obtained pursuant to Section 1524.

(b) The prohibitions of this section continue to apply to records concerning any individual who has been a patient, irrespective of whether or when he or she ceases to be a patient.

(c) Except where an extraordinary order under Section 1544 is granted or a search warrant is obtained pursuant to Section 1524, any health care facility whose records are sought under this chapter shall be notified of the application and afforded an opportunity to appear and be heard thereon.

(d) Both disclosure and dissemination of any information from the records shall be limited under the terms of the order to assure that no information will be unnecessarily disclosed and that dissemination will be no wider than necessary.

This chapter shall not apply to investigations of fraud in the provision or receipt of Medi-Cal benefits, investigations of insurance fraud performed by the Department of Insurance or the California Highway Patrol, investigations of workers' compensation insurance fraud performed by the Department of Corrections and conducted by peace officers specified in paragraph (2) of subdivision (d) of Section 830.2, and investigations and research regarding occupational health and safety performed by or under agreement with the Department of Industrial Relations. Access to medical records in these investigations shall be governed by all laws in effect at the time access is sought.

(e) Nothing in this chapter shall prohibit disclosure by a medical facility or medical provider of information contained in medical records where disclosure to specific agencies is mandated by statutes or regulations.

(f) This chapter shall not be construed to authorize disclosure of privileged records to law enforcement agencies by the procedure set forth in this chapter, where the privileged records are required to be secured by the special master procedure set forth in subdivision (c) of Section 1524 or required by law to be confidential.

CHAPTER 491

An act to amend, repeal, and add Sections 1351.2 and 1367.01 of the Health and Safety Code, relating to health care.

[Approved by Governor September 13, 2004. Filed with Secretary of State September 13, 2004.]

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

SECTION 1. Section 1351.2 of the Health and Safety Code is amended to read:

1351.2. (a) If a prepaid health plan operating lawfully under the laws of Mexico elects to operate a health care service plan in this state, the prepaid health plan shall apply for licensure as a health care service plan under this chapter by filing an application for licensure in the form prescribed by the department and verified by an authorized representative of the applicant. The prepaid health plan shall be subject to the provisions of this chapter, and the rules adopted by the director thereunder, as determined by the director to be applicable. The application shall be accompanied by the fee prescribed by subdivision (a) of Section 1356 and shall demonstrate compliance with the following requirements:

(1) The prepaid health plan is constituted and operating lawfully under the laws of Mexico and, if required by Mexican law, is authorized as an Insurance Institution Specializing in Health by the Mexican Insurance Commission. If the Mexican Insurance Commission determines that the prepaid health plan is not required to be authorized as an Insurance Institution Specializing in Health under the laws of Mexico, the applicant shall obtain written verification from the Mexican Insurance Commission stating that the applicant is not required to be authorized as an Insurance Institution Specializing in Health in Mexico. A Mexican prepaid health plan that is not required to be an Insurance

Institution Specializing in Health shall obtain written verification from the Mexican Ministry of Health that the prepaid health plan and its provider network are operating in full compliance of Mexican law.

(2) The prepaid health plan offers and sells in this state only employer-sponsored group plan contracts exclusively for the benefit of Mexican nationals legally employed in the County of San Diego or the County of Imperial, and for the benefit of their dependents regardless of nationality, that pay for, reimburse the cost of, or arrange for the provision or delivery of health care services that are to be provided or delivered wholly in Mexico, except for the provision or delivery of those health care services set forth in paragraph (4).

(3) Solicitation of plan contracts in this state is made only through insurance brokers and agents licensed in this state or a third-party administrator licensed in this state, each of which is authorized to offer and sell plan group contracts.

(4) Group contracts provide, through a contract of insurance between the prepaid health plan and an insurer admitted in this state, for the reimbursement of emergency and urgent care services provided out of area as required by subdivision (h) of Section 1345.

(5) All advertising, solicitation material, disclosure statements, evidences of coverage, and contracts are in compliance with the appropriate provisions of this chapter and the rules or orders of the director. The director shall require that each of these documents contain a legend in 10-point type, in both English and Spanish, declaring that the health care service plan contract provided by the prepaid health plan may be limited as to benefits, rights, and remedies under state and federal law.

(6) All funds received by the prepaid health plan from a subscriber are deposited in an account of a bank organized under the laws of this state or in an account of a national bank located in this state.

(7) The prepaid health plan maintains a tangible net equity as required by this chapter and the rules of the director, as calculated under United States generally accepted accounting principles, in the amount of a least one million dollars ($1,000,000). In lieu of an amount in excess of the minimum tangible net equity of one million dollars ($1,000,000), the prepaid health plan may demonstrate a reasonable acceptable alternative reimbursement arrangement that the director may in his or her discretion accept. The prepaid health plan shall also maintain a fidelity bond and a surety bond as required by Section 1376 and the rules of the director.

(8) The prepaid health plan agrees to make all of its books and records, including the books and records of health care providers in Mexico, available to the director in the form and at the time and place requested by the director. Books and records shall be made available to the director no later than 24 hours from the date of the request.

(9) The prepaid health plan files a consent to service of process with the director and agrees to be subject to the laws of this state and the United States in any investigation, examination, dispute, or other matter arising from the advertising, solicitation, or offer and sale of a plan contract, or the management or provision of health care services in this state or throughout the United States. The prepaid health plan shall agree to notify the director, immediately and in no case later than one business day, if it is subject to any investigation, examination, or administrative or legal action relating to the prepaid health plan or the operations of the prepaid health plan initiated by the government of Mexico or the government of any state of Mexico against the prepaid health plan or any officer, director, security holder, or contractor owning 10 percent or more of the securities of the prepaid health plan. The prepaid health plan shall agree that in the event of conflict of laws in any action arising out of the license, the laws of California and the United States shall apply.

(10) The prepaid health plan agrees that disputes arising from the group contracts involving group contractholders and providers of health care services in the United States shall be subject to the jurisdiction of the courts of this state and the United States.

(11) The prepaid health plan shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 of the Business and Professions Code or pursuant to the Osteopathic Act for health care services set forth in paragraph (4). For health care services that are to be provided or delivered wholly in Mexico, the prepaid health plan may employ or designate a medical director operating under the laws of Mexico.

(b) The prepaid health plan shall pay the application processing fee and other fees and assessments set forth in Section 1356. The director, by order, may designate provisions of this chapter and rules adopted thereunder that need not be applied to a prepaid health plan licensed under the laws of Mexico when consistent with the intent and purpose of this chapter, and in the public interest.

(c) If the plan ceases to operate legally in Mexico, the director shall immediately deliver written notice to the health care service plan that it is not in compliance with the provisions of this section. If this occurs, a health care service plan shall do all of the following:

(1) Provide the director with written proof that the prepaid health plan has complied with the laws of Mexico not later than 45 days after the date the written notice is received by the health care service plan.

(2) If, by the 45th day, the health care service plan is unable to provide written confirmation that it is in full compliance with Mexican law, the director shall notify the health care service plan in writing that it is prohibited from accepting any new enrollees or subscribers. The health

care service plan shall be given an additional 180 days to comply with Mexican law or to become a licensed health care service plan.

(3) If, at the end of the 180-day notice period in paragraph (2), the health care service plan has not complied with the laws of Mexico or California, the director shall issue an order that the health care service plan cease and desist operations in California.

(d) This section shall be repealed on January 1, 2008, unless a later enacted statute, that becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 2. Section 1351.2 is added to the Health and Safety Code, to read:

1351.2. (a) If a prepaid health plan operating lawfully under the laws of Mexico elects to operate a health care service plan in this state, the prepaid health plan shall apply for licensure as a health care service plan under this chapter by filing an application for licensure in the form prescribed by the department and verified by an authorized representative of the applicant. The prepaid health plan shall be subject to the provisions of this chapter, and the rules adopted by the director thereunder, as determined by the director to be applicable. The application shall be accompanied by the fee prescribed by subdivision (a) of Section 1356 and shall demonstrate compliance with the following requirements:

(1) The prepaid health plan is constituted and operating lawfully under the laws of Mexico and, if required by Mexican law, is authorized as an Insurance Institution Specializing in Health by the Mexican Insurance Commission. If the Mexican Insurance Commission determines that the prepaid health plan is not required to be authorized as an Insurance Institution Specializing in Health under the laws of Mexico, the applicant shall obtain written verification from the Mexican Insurance Commission stating that the applicant is not required to be authorized as an Insurance Institution Specializing in Health in Mexico. A Mexican prepaid health plan not required to be an Insurance Institution Specializing in Health shall obtain written verification from the Mexican Ministry of Health that the prepaid health plan and its provider network are operating in full compliance of Mexican law.

(2) The prepaid health plan offers and sells in this state only employer-sponsored group plan contracts exclusively for the benefit of citizens of Mexico legally employed in this state, and for the benefit of their dependents regardless of nationality, that pay for, reimburse the cost of, or arrange for the provision or delivery of health care services that are to be provided or delivered wholly in Mexico, except for the provision or delivery of those health care services set forth in subparagraphs (A) and (B) of paragraph (4).

(3) Solicitation of plan contracts in this state is made only through insurance brokers and agents licensed in this state or a third-party administrator licensed in this state, each of which is authorized to offer and sell plan group contracts.

(4) Group contracts provide, through a contract of insurance between the prepaid health plan and an insurer admitted in this state, for the reimbursement of emergency and urgent care services provided out of area as required by subdivision (h) of Section 1345.

(5) All advertising, solicitation material, disclosure statements, evidences of coverage, and contracts are in compliance with the appropriate provisions of this chapter and the rules or orders of the director. The director shall require that each of these documents contain a legend in 10-point type, in both English and Spanish, declaring that the health care service plan contract provided by the prepaid health plan may be limited as to benefits, rights, and remedies under state and federal law.

(6) All funds received by the prepaid health plan from a subscriber are deposited in an account of a bank organized under the laws of this state or in an account of a national bank located in this state.

(7) The prepaid health plan maintains a tangible net equity as required by this chapter and the rules of the director, as calculated under United States generally accepted accounting principles, in the amount of a least one million dollars ($1,000,000). In lieu of an amount in excess of the minimum tangible net equity of one million dollars ($1,000,000), the prepaid health plan may demonstrate a reasonable acceptable alternative reimbursement arrangement that the director may in his or her discretion accept. The prepaid health plan shall also maintain a fidelity bond and a surety bond as required by Section 1376 and the rules of the director.

(8) The prepaid health plan agrees to make all of its books and records, including the books and records of health care providers in Mexico, available to the director in the form and at the time and place requested by the director. Books and records shall be made available to the director no later than 24 hours from the date of the request.

(9) The prepaid health plan files a consent to service of process with the director and agrees to be subject to the laws of this state and the United States in any investigation, examination, dispute, or other matter arising from the advertising, solicitation, or offer and sale of a plan contract, or the management or provision of health care services in this state or throughout the United States. The prepaid health plan shall agree to notify the director, immediately and in no case later than one business day, if it is subject to any investigation, examination, or administrative or legal action relating to the prepaid health plan or the operations of the prepaid health plan initiated by the government of Mexico or the government of any state of Mexico against the prepaid health plan or any officer, director, security holder, or contractor owning 10 percent or more

of the securities of the prepaid health plan. The prepaid health plan shall agree that in the event of conflict of laws in any action arising out of the license, the laws of California and the United States shall apply.

(10) The prepaid health plan agrees that disputes arising from the group contracts involving group contractholders and providers of health care services in the United States shall be subject to the jurisdiction of the courts of this state and the United States.

(b) The prepaid health plan shall pay the application processing fee and other fees and assessments set forth in Section 1356. The director, by order, may designate provisions of this chapter and rules adopted thereunder that need not be applied to a prepaid health plan licensed under the laws of Mexico when consistent with the intent and purpose of this chapter, and in the public interest.

(c) If the plan ceases to operate legally in Mexico, the director shall immediately deliver written notice to the health care service plan that it is not in compliance with the provisions of this section. If this occurs, a health care service plan shall do all of the following:

(1) Provide the director with written proof that the prepaid health plan has complied with the laws of Mexico not later than 45 days after the date the written notice is received by the health care service plan.

(2) If, by the 45th day, the health care service plan is unable to provide written confirmation it is in full compliance with Mexican law, the director shall notify the health care service plan in writing that it is prohibited from accepting any new enrollees or subscribers. The health care service plan shall be given an additional 180 days to comply with Mexican law or to become a licensed health care service plan.

(3) If, at the end of the 180-day notice period in paragraph (2), the health care service plan has not complied with the laws of Mexico or California, the director shall issue an order that the health care service plan cease and desist operations in California.

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

SEC. 3. Section 1367.01 of the Health and Safety Code is amended to read:

1367.01. (a) A health care service plan and any entity with which it contracts for services that include utilization review or utilization management functions, that prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, or that delegates these functions to medical groups or independent practice associations or to other contracting providers, shall comply with this section.

(b) A health care service plan that is subject to this section shall have written policies and procedures establishing the process by which the

plan prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers of health care services for plan enrollees. These policies and procedures shall ensure that decisions based on the medical necessity of proposed health care services are consistent with criteria or guidelines that are supported by clinical principles and processes. These criteria and guidelines shall be developed pursuant to Section 1363.5. These policies and procedures, and a description of the process by which the plan reviews and approves, modifies, delays, or denies requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, shall be filed with the director for review and approval, and shall be disclosed by the plan to providers and enrollees upon request, and by the plan to the public upon request.

(c) A health care service plan subject to this section, except a plan that meets the requirements of Section 1351.2, shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 of the Business and Professions Code or pursuant to the Osteopathic Act, or, if the plan is a specialized health care service plan, a clinical director with California licensure in a clinical area appropriate to the type of care provided by the specialized health care service plan. The medical director or clinical director shall ensure that the process by which the plan reviews and approves, modifies, or denies, based in whole or in part on medical necessity, requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, complies with the requirements of this section.

(d) If health plan personnel, or individuals under contract to the plan to review requests by providers, approve the provider's request, pursuant to subdivision (b), the decision shall be communicated to the provider pursuant to subdivision (h).

(e) No individual, other than a licensed physician or a licensed health care professional who is competent to evaluate the specific clinical issues involved in the health care services requested by the provider, may deny or modify requests for authorization of health care services for an enrollee for reasons of medical necessity. The decision of the physician or other health care professional shall be communicated to the provider and the enrollee pursuant to subdivision (h).

(f) The criteria or guidelines used by the health care service plan to determine whether to approve, modify, or deny requests by providers prior to, retrospectively, or concurrent with, the provision of health care services to enrollees shall be consistent with clinical principles and processes. These criteria and guidelines shall be developed pursuant to the requirements of Section 1363.5.

(g) If the health care service plan requests medical information from providers in order to determine whether to approve, modify, or deny requests for authorization, the plan shall request only the information reasonably necessary to make the determination.

(h) In determining whether to approve, modify, or deny requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, based in whole or in part on medical necessity, a health care service plan subject to this section shall meet the following requirements:

(1) Decisions to approve, modify, or deny, based on medical necessity, requests by providers prior to, or concurrent with the provision of health care services to enrollees that do not meet the requirements for the 72-hour review required by paragraph (2), shall be made in a timely fashion appropriate for the nature of the enrollee's condition, not to exceed five business days from the plan's receipt of the information reasonably necessary and requested by the plan to make the determination. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of the receipt of information that is reasonably necessary to make this determination, and shall be communicated to the provider in a manner that is consistent with current law. For purposes of this section, retrospective reviews shall be for care rendered on or after January 1, 2000.

(2) When the enrollee's condition is such that the enrollee faces an imminent and serious threat to his or her health including, but not limited to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the enrollee's life or health or could jeopardize the enrollee's ability to regain maximum function, decisions to approve, modify, or deny requests by providers prior to, or concurrent with, the provision of health care services to enrollees, shall be made in a timely fashion appropriate for the nature of the enrollee's condition, not to exceed 72 hours after the plan's receipt of the information reasonably necessary and requested by the plan to make the determination. Nothing in this section shall be construed to alter the requirements of subdivision (b) of Section 1371.4. Notwithstanding Section 1371.4, the requirements of this division shall be applicable to all health plans and other entities conducting utilization review or utilization management.

(3) Decisions to approve, modify, or deny requests by providers for authorization prior to, or concurrent with, the provision of health care services to enrollees shall be communicated to the requesting provider within 24 hours of the decision. Except for concurrent review decisions pertaining to care that is underway, which shall be communicated to the

enrollee's treating provider within 24 hours, decisions resulting in denial, delay, or modification of all or part of the requested health care service shall be communicated to the enrollee in writing within two business days of the decision. In the case of concurrent review, care shall not be discontinued until the enrollee's treating provider has been notified of the plan's decision and a care plan has been agreed upon by the treating provider that is appropriate for the medical needs of that patient.

(4) Communications regarding decisions to approve requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees shall specify the specific health care service approved. Responses regarding decisions to deny, delay, or modify health care services requested by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees shall be communicated to the enrollee in writing, and to providers initially by telephone or facsimile, except with regard to decisions rendered retrospectively, and then in writing, and shall include a clear and concise explanation of the reasons for the plan's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity. Any written communication to a physician or other health care provider of a denial, delay, or modification of a request shall include the name and telephone number of the health care professional responsible for the denial, delay, or modification. The telephone number provided shall be a direct number or an extension, to allow the physician or health care provider easily to contact the professional responsible for the denial, delay, or modification. Responses shall also include information as to how the enrollee may file a grievance with the plan pursuant to Section 1368, and in the case of Medi-Cal enrollees, shall explain how to request an administrative hearing and aid paid pending under Sections 51014.1 and 51014.2 of Title 22 of the California Code of Regulations.

(5) If the health care service plan cannot make a decision to approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2) because the plan is not in receipt of all of the information reasonably necessary and requested, or because the plan requires consultation by an expert reviewer, or because the plan has asked that an additional examination or test be performed upon the enrollee, provided the examination or test is reasonable and consistent with good medical practice, the plan shall, immediately upon the expiration of the timeframe specified in paragraph (1) or (2) or as soon as the plan becomes aware that it will not meet the timeframe, whichever occurs first, notify the provider and the enrollee, in writing, that the plan cannot make a decision to approve, modify, or deny the request for authorization within the required timeframe, and specify the information

requested but not received, or the expert reviewer to be consulted, or the additional examinations or tests required. The plan shall also notify the provider and enrollee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the plan, the plan shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2), whichever applies.

(6) If the director determines that a health care service plan has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected, in accordance with subdivision (a) of Section 1397. The administrative penalties shall not be deemed an exclusive remedy for the director. These penalties shall be paid to the State Managed Care Fund.

(i) A health care service plan subject to this section shall maintain telephone access for providers to request authorization for health care services.

(j) A health care service plan subject to this section that reviews requests by providers prior to, retrospectively, or concurrent with, the provision of health care services to enrollees shall establish, as part of the quality assurance program required by Section 1370, a process by which the plan's compliance with this section is assessed and evaluated. The process shall include provisions for evaluation of complaints, assessment of trends, implementation of actions to correct identified problems, mechanisms to communicate actions and results to the appropriate health plan employees and contracting providers, and provisions for evaluation of any corrective action plan and measurements of performance.

(k) The director shall review a health care service plan's compliance with this section as part of its periodic onsite medical survey of each plan undertaken pursuant to Section 1380, and shall include a discussion of compliance with this section as part of its report issued pursuant to that section.

(*l*) This section shall not apply to decisions made for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of religion as set forth in subdivision (a) of Section 1270.

(m) Nothing in this section shall cause a health care service plan to be defined as a health care provider for purposes of any provision of law, including, but not limited to, Section 6146 of the Business and Professions Code, Sections 3333.1 and 3333.2 of the Civil Code, and

Sections 340.5, 364, 425.13, 667.7, and 1295 of the Code of Civil Procedure.

(n) This section shall be repealed on January 1, 2008, unless a later enacted statute, that becomes effective on or before January 1, 2008, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 4. Section 1367.01 is added to the Health and Safety Code, to read:

1367.01. (a) A health care service plan and any entity with which it contracts for services that include utilization review or utilization management functions, that prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, or that delegates these functions to medical groups or independent practice associations or to other contracting providers, shall comply with this section.

(b) A health care service plan that is subject to this section shall have written policies and procedures establishing the process by which the plan prospectively, retrospectively, or concurrently reviews and approves, modifies, delays, or denies, based in whole or in part on medical necessity, requests by providers of health care services for plan enrollees. These policies and procedures shall ensure that decisions based on the medical necessity of proposed health care services are consistent with criteria or guidelines that are supported by clinical principles and processes. These criteria and guidelines shall be developed pursuant to Section 1363.5. These policies and procedures, and a description of the process by which the plan reviews and approves, modifies, delays, or denies requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, shall be filed with the director for review and approval, and shall be disclosed by the plan to providers and enrollees upon request, and by the plan to the public upon request.

(c) A health care service plan subject to this section shall employ or designate a medical director who holds an unrestricted license to practice medicine in this state issued pursuant to Section 2050 of the Business and Professions Code or pursuant to the Osteopathic Act, or, if the plan is a specialized health care service plan, a clinical director with California licensure in a clinical area appropriate to the type of care provided by the specialized health care service plan. The medical director or clinical director shall ensure that the process by which the plan reviews and approves, modifies, or denies, based in whole or in part on medical necessity, requests by providers prior to, retrospectively, or

concurrent with the provision of health care services to enrollees, complies with the requirements of this section.

(d) If health plan personnel, or individuals under contract to the plan to review requests by providers, approve the provider's request, pursuant to subdivision (b), the decision shall be communicated to the provider pursuant to subdivision (h).

(e) An individual, other than a licensed physician or a licensed health care professional who is competent to evaluate the specific clinical issues involved in the health care services requested by the provider, may not deny or modify requests for authorization of health care services for an enrollee for reasons of medical necessity. The decision of the physician or other health care professional shall be communicated to the provider and the enrollee pursuant to subdivision (h).

(f) The criteria or guidelines used by the health care service plan to determine whether to approve, modify, or deny requests by providers prior to, retrospectively, or concurrent with, the provision of health care services to enrollees shall be consistent with clinical principles and processes. These criteria and guidelines shall be developed pursuant to the requirements of Section 1363.5.

(g) If the health care service plan requests medical information from providers in order to determine whether to approve, modify, or deny requests for authorization, the plan shall request only the information reasonably necessary to make the determination.

(h) In determining whether to approve, modify, or deny requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees, based in whole or in part on medical necessity, every health care service plan subject to this section shall meet the following requirements:

(1) Decisions to approve, modify, or deny, based on medical necessity, requests by providers prior to, or concurrent with the provision of health care services to enrollees that do not meet the requirements for the 72-hour review required by paragraph (2), shall be made in a timely fashion appropriate for the nature of the enrollee's condition, not to exceed five business days from the plan's receipt of the information reasonably necessary and requested by the plan to make the determination. In cases where the review is retrospective, the decision shall be communicated to the individual who received services, or to the individual's designee, within 30 days of the receipt of information that is reasonably necessary to make this determination, and shall be communicated to the provider in a manner that is consistent with current law. For purposes of this section, retrospective reviews shall be for care rendered on or after January 1, 2000.

(2) When the enrollee's condition is such that the enrollee faces an imminent and serious threat to his or her health including, but not limited

to, the potential loss of life, limb, or other major bodily function, or the normal timeframe for the decisionmaking process, as described in paragraph (1), would be detrimental to the enrollee's life or health or could jeopardize the enrollee's ability to regain maximum function, decisions to approve, modify, or deny requests by providers prior to, or concurrent with, the provision of health care services to enrollees, shall be made in a timely fashion appropriate for the nature of the enrollee's condition, not to exceed 72 hours after the plan's receipt of the information reasonably necessary and requested by the plan to make the determination. Nothing in this section shall be construed to alter the requirements of subdivision (b) of Section 1371.4. Notwithstanding Section 1371.4, the requirements of this division shall be applicable to all health plans and other entities conducting utilization review or utilization management.

(3) Decisions to approve, modify, or deny requests by providers for authorization prior to, or concurrent with, the provision of health care services to enrollees shall be communicated to the requesting provider within 24 hours of the decision. Except for concurrent review decisions pertaining to care that is underway, which shall be communicated to the enrollee's treating provider within 24 hours, decisions resulting in denial, delay, or modification of all or part of the requested health care service shall be communicated to the enrollee in writing within two business days of the decision. In the case of concurrent review, care shall not be discontinued until the enrollee's treating provider has been notified of the plan's decision, and a care plan has been agreed upon by the treating provider that is appropriate for the medical needs of that patient.

(4) Communications regarding decisions to approve requests by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees shall specify the specific health care service approved. Responses regarding decisions to deny, delay, or modify health care services requested by providers prior to, retrospectively, or concurrent with the provision of health care services to enrollees shall be communicated to the enrollee in writing, and to providers initially by telephone or facsimile, except with regard to decisions rendered retrospectively, and then in writing, and shall include a clear and concise explanation of the reasons for the plan's decision, a description of the criteria or guidelines used, and the clinical reasons for the decisions regarding medical necessity. Any written communication to a physician or other health care provider of a denial, delay, or modification of a request shall include the name and telephone number of the health care professional responsible for the denial, delay, or modification. The telephone number provided shall be a direct number or an extension, to allow the physician or health care provider easily to

contact the professional responsible for the denial, delay, or modification. Responses shall also include information as to how the enrollee may file a grievance with the plan pursuant to Section 1368, and in the case of Medi-Cal enrollees, shall explain how to request an administrative hearing and aid paid pending under Sections 51014.1 and 51014.2 of Title 22 of the California Code of Regulations.

(5) If the health care service plan cannot make a decision to approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2) because the plan is not in receipt of all of the information reasonably necessary and requested, or because the plan requires consultation by an expert reviewer, or because the plan has asked that an additional examination or test be performed upon the enrollee, provided the examination or test is reasonable and consistent with good medical practice, the plan shall, immediately upon the expiration of the timeframe specified in paragraph (1) or (2) or as soon as the plan becomes aware that it will not meet the timeframe, whichever occurs first, notify the provider and the enrollee, in writing, that the plan cannot make a decision to approve, modify, or deny the request for authorization within the required timeframe, and specify the information requested but not received, or the expert reviewer to be consulted, or the additional examinations or tests required. The plan shall also notify the provider and enrollee of the anticipated date on which a decision may be rendered. Upon receipt of all information reasonably necessary and requested by the plan, the plan shall approve, modify, or deny the request for authorization within the timeframes specified in paragraph (1) or (2), whichever applies.

(6) If the director determines that a health care service plan has failed to meet any of the timeframes in this section, or has failed to meet any other requirement of this section, the director may assess, by order, administrative penalties for each failure. A proceeding for the issuance of an order assessing administrative penalties shall be subject to appropriate notice to, and an opportunity for a hearing with regard to, the person affected, in accordance with subdivision (a) of Section 1397. The administrative penalties shall not be deemed an exclusive remedy for the director. These penalties shall be paid to the State Managed Care Fund.

(i) A health care service plan subject to this section shall maintain telephone access for providers to request authorization for health care services.

(j) A health care service plan subject to this section that reviews requests by providers prior to, retrospectively, or concurrent with, the provision of health care services to enrollees shall establish, as part of the quality assurance program required by Section 1370, a process by which the plan's compliance with this section is assessed and evaluated. The process shall include provisions for evaluation of complaints,

assessment of trends, implementation of actions to correct identified problems, mechanisms to communicate actions and results to the appropriate health plan employees and contracting providers, and provisions for evaluation of any corrective action plan and measurements of performance.

(k) The director shall review a health care service plan's compliance with this section as part of its periodic onsite medical survey of each plan undertaken pursuant to Section 1380, and shall include a discussion of compliance with this section as part of its report issued pursuant to that section.

(*l*) This section shall not apply to decisions made for the care or treatment of the sick who depend upon prayer or spiritual means for healing in the practice of religion as set forth in subdivision (a) of Section 1270.

(m) Nothing in this section shall cause a health care service plan to be defined as a health care provider for purposes of any provision of law, including, but not limited to, Section 6146 of the Business and Professions Code, Sections 3333.1 and 3333.2 of the Civil Code, and Sections 340.5, 364, 425.13, 667.7, and 1295 of the Code of Civil Procedure.

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

CHAPTER 492

An act to add Article 3.5 (commencing with Section 17568.5) to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, and to amend Section 396 of the Penal Code, relating to advertising.

[Approved by Governor September 13, 2004. Filed with Secretary of State September 13, 2004.]

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

SECTION 1. Article 3.5 (commencing with Section 17568.5) is added to Chapter 1 of Part 3 of Division 7 of the Business and Professions Code, to read:

Article 3.5. Hotel And Motel Advertised Rates

17568.5. Upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or other natural disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood,

fire, riot, storm, or other natural disaster by the executive officer of any county, city, or city and county, and for a period of 30 days following that proclamation or declaration, an owner or operator of a hotel or motel may not increase the hotel or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent. This prohibition does not apply if the owner or operator can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates.

SEC. 2. Section 396 of the Penal Code is amended to read:

396. (a) The Legislature hereby finds that during emergencies and major disasters, including, but not limited to, earthquakes, fires, floods, or civil disturbances, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this act to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. Further it is the intent of the Legislature that this section be liberally construed so that its beneficial purposes may be served.

(b) Upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster by the executive officer of any county, city, or city and county, and for a period of 30 days following that declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of emergency. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the

increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency, the price represents no more than 10 percent above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency.

(c) Upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, or storm declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, or storm by the executive officer of any county, city, or city and county, and for a period of 180 days following that declaration, it is unlawful for a contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation of emergency. However, a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service during the state of emergency, the price represents no more than 10 percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency.

(d) Upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or other natural disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or other natural disaster by the executive officer of any county, city, or city and county, and for a period of 30 days following that proclamation or declaration, it is unlawful for an owner or operator of a hotel or motel to increase the hotel or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent. However, a greater price increase is not unlawful if the owner or operator can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates.

(e) The provisions of this section may be extended for additional 30-day periods by a local legislative body or the California Legislature, if deemed necessary to protect the lives, property, or welfare of the citizens.

(f) A violation of this section is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than ten thousand dollars ($10,000), or by both that fine and imprisonment.

(g) A violation of this section shall constitute an unlawful business practice and an act of unfair competition within the meaning of Section 17200 of the Business and Professions Code. The remedies and penalties provided by this section are cumulative to each other, the remedies under Section 17200 of the Business and Professions Code, and the remedies or penalties available under all other laws of this state.

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

(1) ''State of emergency'' means a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a state of emergency has been declared by the President of the United States or the Governor of California.

(2) ''Local emergency'' means a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a local emergency has been declared by the executive officer or governing body of any city or county in California.

(3) ''Consumer food item'' means any article that is used or intended for use for food, drink, confection, or condiment by a person or animal.

(4) ''Repair or reconstruction services'' means services performed by any person who is required to be licensed under the Contractors' State License Law (Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code), for repairs to residential or commercial property of any type that is damaged as a result of a disaster.

(5) ''Emergency supplies'' includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers.

(6) ''Medical supplies'' includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

(7) ''Building materials'' means lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

(8) ''Gasoline'' means any fuel used to power any motor vehicle or power tool.

(9) ''Transportation, freight, and storage services'' means any service that is performed by any company that contracts to move, store, or transport personal or business property or rents equipment for those purposes.

(10) ''Housing'' means any rental housing leased on a month-to-month term.

(11) ''Goods'' has the same meaning as defined in subdivision (c) of Section 1689.5 of the Civil Code.

(i) Nothing in this section shall preempt any local ordinance prohibiting the same or similar conduct or imposing a more severe penalty for the same conduct prohibited by this section.

(j) A business offering an item for sale at a reduced price immediately prior to the proclamation of the emergency may use the price at which it usually sells the item to calculate the price pursuant to subdivision (b) or (c).

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 493

An act to add Sections 56139 and 56331 to the Education Code, to amend Section 7576 of, and to add Sections 7576.2 and 7576.3 to, the Government Code, and to add Section 5701.6 to the Welfare and Institutions Code, relating to special education, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 13, 2004. Filed with Secretary of State September 13, 2004.]

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

SECTION 1. Section 56139 is added to the Education Code, to read:

56139. (a) The superintendent is responsible for monitoring local educational agencies to ensure compliance with the requirement to provide mental health services to individuals with exceptional needs pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code and to ensure that funds provided for this purpose are appropriately utilized.

(b) The superintendent shall submit a report to the Legislature by April 1, 2005, that includes all of the following:

(1) A description of the data that is currently collected by the department related to pupils served and services provided pursuant to

Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(2) A description of the existing monitoring processes used by the department to ensure that local educational agencies are complying with Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, including the monitoring performed to ensure the appropriate use of funds for programs identified in Section 64000.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the department of the compliance by a local educational agency with the requirements of Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Mental Health in monitoring and data collection activities, and on the additional data needed related to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(c) The superintendent shall collaborate with the Director of the State Department of Mental Health in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Mental Health and mental health directors, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

SEC. 2. Section 56331 is added to the Education Code, to read:

56331. (a) A pupil who is suspected of needing mental health services may be referred to a community mental health service in accordance with Section 7576 of the Government Code.

(b) Prior to referring a pupil to a county mental health agency for services, the local educational agency shall follow the procedures set forth in Section 56320 and conduct an assessment in accordance with Sections 300.530 to 300.536, inclusive, of Title 34 of the Code of Federal Regulations. If an individual with exceptional needs is identified as potentially requiring mental health services, the local educational agency shall request the participation of the county mental health agency in the individualized education program. A local educational agency shall provide any specially-designed instruction required by an individualized education program, including related services such as counseling services, parent counseling and training, psychological services, or social work services in schools as defined in Section 300.24 of Title 34 of the Code of Federal Regulations. If the individualized education program of an individual with exceptional needs includes a functional behavioral assessment and behavior intervention plan, in accordance with Section 300.520 of Title 34 of the Code of Federal Regulations, the local educational agency shall provide documentation

upon referral to a county mental health agency. Local educational agencies shall provide related services, by qualified personnel, as defined by Section 300.23 of Title 34 of the Code of Federal Regulations, unless the individualized education program team designates a more appropriate agency for the provision of services. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.

SEC. 3. Section 7576 of the Government Code is amended to read:

7576. (a) The State Department of Mental Health, or any community mental health service, as defined in Section 5602 of the Welfare and Institutions Code, designated by the State Department of Mental Health, are responsible for the provision of mental health services, as defined in regulations by the State Department of Mental Health, developed in consultation with the State Department of Education, if required in the individualized education program of a pupil. A local educational agency is not required to place a pupil in a more restrictive educational environment in order for the pupil to receive the mental health services specified in his or her individualized education program if the mental health services can be appropriately provided in a less restrictive setting. It is the intent of the Legislature that the local educational agency and the community mental health service vigorously attempt to develop a mutually satisfactory placement that is acceptable to the parent and addresses the educational and mental health treatment needs of the pupil in a manner that is cost-effective for both public agencies, subject to the requirements of state and federal special education law, including the requirement that the placement be appropriate and in the least restrictive environment. For purposes of this section, ''parent'' is as defined in Section 56028 of the Education Code.

(b) A local educational agency, individualized education program team, or parent may initiate a referral for assessment of the social and emotional status of a pupil, pursuant to Section 56320 of the Education Code. Based on the results of assessments completed pursuant to Section 56320 of the Education Code, an individualized education program team may refer a pupil who has been determined to be an individual with exceptional needs as defined in Section 56026 of the Education Code and who is suspected of needing mental health services to a community mental health service if the pupil meets all of the criteria in paragraphs (1) to (5), inclusive. Referral packages shall include all documentation required in subdivision (c), and shall be provided immediately to the community mental health service.

(1) The pupil has been assessed by school personnel in accordance with Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code. Local educational agencies and community mental health services shall work collaboratively to ensure that assessments performed prior to referral are as useful as possible to the community mental health service in determining the need for mental health services and the level of services needed.

(2) The local educational agency has obtained written parental consent for the referral of the pupil to the community mental health service, for the release and exchange of all relevant information between the local educational agency and the community mental health service, and for the observation of the pupil by mental health professionals in an educational setting.

(3) The pupil has emotional or behavioral characteristics that are all of the following:

(A) Are observed by qualified educational staff in educational and other settings, as appropriate.

(B) Impede the pupil from benefiting from educational services.

(C) Are significant as indicated by their rate of occurrence and intensity.

(D) Are associated with a condition that cannot be described solely as a social maladjustment or a temporary adjustment problem, and cannot be resolved with short-term counseling.

(4) As determined using educational assessments, the pupil's functioning, including cognitive functioning, is at a level sufficient to enable the pupil to benefit from mental health services.

(5) The local educational agency, pursuant to Section 56331 of the Education Code, has provided appropriate counseling and guidance services, psychological services, parent counseling and training, or social work services to the pupil pursuant to Section 56363 of the Education Code, or behavioral intervention as specified in Section 56520 of the Education Code, as specified in the individualized education program and the individualized education program team has determined that the services do not meet the educational needs of the pupil, or, in cases where these services are clearly inadequate or inappropriate to meet the educational needs of the pupil, the individualized education program team has documented which of these services were considered and why they were determined to be inadequate or inappropriate.

(c) If referring a pupil to a community mental health service in accordance with subdivision (b), the local educational agency or the individualized education program team shall provide the following documentation:

(1) Copies of the current individualized education program, all current assessment reports completed by school personnel in all areas of suspected disabilities pursuant to Article 2 (commencing with Section 56320) of Chapter 4 of Part 30 of the Education Code, and other relevant information, including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria set forth in paragraphs (3) and (4) of subdivision (b).

(4) A description of the counseling, psychological, and guidance services, and other interventions that have been provided to the pupil, as provided in the individualized education program of the pupil, including the initiation, duration, and frequency of these services, or an explanation of the reasons a service was considered for the pupil and determined to be inadequate or inappropriate to meet his or her educational needs.

(d) Based on preliminary results of assessments performed pursuant to Section 56320 of the Education Code, a local educational agency may refer a pupil who has been determined to be, or is suspected of being, an individual with exceptional needs, and is suspected of needing mental health services, to a community mental health service if a pupil meets the criteria in paragraphs (1) and (2). Referral packages shall include all documentation required in subdivision (e) and shall be provided immediately to the community mental health service.

(1) The pupil meets the criteria in paragraphs (2) to (4), inclusive, of subdivision (b).

(2) Counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(e) If referring a pupil to a community mental health service in accordance with subdivision (d), the local educational agency shall provide the following documentation:

(1) Results of preliminary assessments to the extent they are available and other relevant information including reports completed by other agencies.

(2) A copy of the parent's consent obtained as provided in paragraph (2) of subdivision (b).

(3) A summary of the emotional or behavioral characteristics of the pupil, including documentation that the pupil meets the criteria in paragraphs (3) and (4) of subdivision (b).

(4) Documentation that appropriate related educational and designated instruction and services have been provided in accordance with Sections 300.24 and 300.26 of Title 34 of the Code of Federal Regulations.

(5) An explanation as to the reasons that counseling and guidance services, psychological services, parent counseling and training, social work services, and behavioral or other interventions as provided in the individualized education program of the pupil are clearly inadequate or inappropriate in meeting his or her educational needs.

(f) The procedures set forth in this chapter are not designed for use in responding to psychiatric emergencies or other situations requiring immediate response. In these situations, a parent may seek services from other public programs or private providers, as appropriate. This subdivision does not change the identification and referral responsibilities imposed on local educational agencies under Article 1 (commencing with Section 56300) of Chapter 4 of Part 30 of the Education Code.

(g) Referrals shall be made to the community mental health service in the county in which the pupil lives. If the pupil has been placed into residential care from another county, the community mental health service receiving the referral shall forward the referral immediately to the community mental health service of the county of origin, which shall have fiscal and programmatic responsibility for providing or arranging for provision of necessary services. In no event shall the procedures described in this subdivision delay or impede the referral and assessment process.

(h) A county mental health agency does not have fiscal or legal responsibility for any costs it incurs prior to the approval of an individualized education program, except for costs associated with conducting a mental health assessment.

SEC. 4. Section 7576.2 is added to the Government Code, to read:

7576.2. (a) The Director of the State Department of Mental Health is responsible for monitoring county mental health agencies to ensure compliance with the requirement to provide mental health services to disabled pupils pursuant to this chapter and to ensure that funds provided for this purpose are appropriately utilized.

(b) The Director of the State Department of Mental Health shall submit a report to the Legislature by April 1, 2005, that includes the following:

(1) A description of the data that is currently collected by the State Department of Mental Health related to pupils served and services provided pursuant to this chapter.

(2) A description of the existing monitoring process used by the State Department of Mental Health to ensure that county mental health agencies are complying with this chapter.

(3) Recommendations on the manner in which to strengthen and improve monitoring by the State Department of Mental Health of the compliance by a county mental health agency with the requirements of this chapter, on the manner in which to strengthen and improve collaboration and coordination with the State Department of Education in monitoring and data collection activities, and on the additional data needed related to this chapter.

(c) The Director of the State Department of Mental Health shall collaborate with the Superintendent of Public Instruction in preparing the report required pursuant to subdivision (b) and shall convene at least one meeting of appropriate stakeholders and organizations, including a representative from the State Department of Education, to obtain input on existing data collection and monitoring processes, and on ways to strengthen and improve the data collected and monitoring performed.

SEC. 5. Section 7576.3 is added to the Government Code, to read:

7576.3. It is the intent of the Legislature that the Director of the State Department of Mental Health collaborate with an entity with expertise in children's mental health to collect, analyze, and disseminate best practices for delivering mental health services to disabled pupils. The best practices may include, but are not limited to:

(a) Interagency agreements in urban, suburban, and rural areas that result in clear identification of responsibilities between local educational agencies and county mental health agencies and result in efficient and effective delivery of services to pupils.

(b) Procedures for developing and amending individualized education programs that include mental health services that provide flexibility to educational and mental health agencies and protect the interests of children in obtaining needed mental health needs.

(c) Procedures for creating ongoing communication between the classroom teacher of the pupil and the mental health professional who is directing the mental health program for the pupil.

SEC. 6. Section 5701.6 is added to the Welfare and Institutions Code, to read:

5701.6. (a) Counties may utilize money received from the Local Revenue Fund established by Chapter 6 (commencing with Section 17600) of Part 5 of Division 9 to fund the costs of any part of those services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. If money from the Local Revenue Fund is used by counties for those services, counties are eligible for reimbursement from the state for all allowable costs to fund assessments, psychotherapy, and other mental health services

allowable pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations and required by Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code.

(b) This section is declaratory of existing law.

SEC. 7. Notwithstanding any other law, the Commission on State Mandates shall, on or before December 31, 2005, reconsider its decision relating to included services and administrative and travel costs associated with services provided pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code, and the parameters and guidelines for calculating the state reimbursements for these costs.

SEC. 8. The funds identified in Provision 20 of Item 6110-161-0001 of Section 2.00 of the Budget Act of 2004 (Chapter 208, Statutes of 2004) shall be allocated to special education local plan areas pursuant to Section 56836.02 of the Education Code on a per average daily attendance basis to implement Section 2 of this act.

SEC. 9. (a) The funds identified in Provision 10 of Item 6110-161-0890 of Section 2.00 of the Budget Act of 2004 (Chapter 208, Statutes of 2004) shall be used exclusively to support mental health services that were both included within an individualized education program pursuant to Section 300.24 of Title 34 of the Code of Federal Regulations and that were provided during the fiscal year by county mental health agencies pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. Funding from this item shall not be provided for services that are not required pursuant to the federal Individuals with Disabilities Education Act. Funding provided from this item shall offset any mandate reimbursement claims for the fiscal year that may be filed by a county pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. The sixty-nine million dollars ($69,000,000) identified in Provision 10 of that item shall be distributed consistent with an allocation plan formulated by the State Department of Mental Health, in consultation with representatives of county mental health agencies. The allocation plan shall be based on the most accurate available data, including, but not limited to, county cost reports for this program, and include a minimum-based methodology to address small county concerns.

(b) The State Department of Mental Health shall submit an allocation plan to the Department of Finance and the Joint Legislative Budget Committee. The Department of Finance shall review the plan and either approve or disapprove the plan within 21 days of submission. If the Department of Finance fails to approve or disapprove the plan within the 21 days, the plan shall be deemed to be approved. If the Department of Finance disapproves the plan it shall submit a letter to the Joint

Legislative Budget Committee that explains the rationale for disapproval and convene a working group consisting of representatives of the Department of Finance and the State Department of Mental Health and staff of the appropriate policy and fiscal committees of the Legislature. The working group shall jointly develop a revised expenditure plan and submit that plan to the Director of Finance for approval.

(c) Funding identified in Provision 10 of Item 6110-161-0890 of Section 2.00 of the Budget Act of 2004 (Chapter 208, Statutes of 2004) shall be allocated to county offices of education for allocation to county mental health agencies pursuant to subdivisions (a) and (b). County offices of education shall allocate funds to county offices of mental health no later than five business days after receipt from the State Department of Education. Following the end of the fiscal year, county mental health agencies shall provide documentation of actual services and costs to county offices of education in a form that permits the county offices of education to certify that all costs actually incurred are allowable under the federal Individuals with Disabilities Education Act and were provided during the fiscal year by county mental health agencies pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government Code. Based on this documentation, any county mental health agency allocation that exceeds actual documented costs for allowable services shall be reallocated on a pro rata basis to other counties where actual costs exceed the allocation provided in subdivisions (a) and (b). Not less than 25 percent of the allocation of each county shall be distributed to county offices of education no later than 30 days after approval of the allocation methodology by the Department of Finance. Of the remaining amount, 35 percent shall be distributed in January and 30 percent in March to county offices of education, with the final 10 percent, as adjusted for actual costs, distributed upon final cost settlement for 2004–05 fiscal year claims. Any amounts reallocated from counties not expending their allocations shall be provided to the other counties no later than January 2006. No county shall be entitled to receive, after claims are cost settled, more funding than was actually expended for this program.

SEC. 10. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to make the necessary statutory changes to implement the Budget Act of 2004 at the earliest possible time, it is necessary that this act take effect immediately.

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CHAPTER 494

An act to amend Sections 245, 12011, 12022, 12022.5, 12275, 12275.5, 12280, 12285, 12286, 12287, 12288, 12288.5, 12289, and 12290 of, and to add Section 12278 to, the Penal Code, relating to firearms.

[Approved by Governor September 13, 2004. Filed with Secretary of State September 13, 2004.]

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

SECTION 1. Section 245 of the Penal Code is amended to read:

245. (a) (1) Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or by any means of force likely to produce great bodily injury shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars ($10,000), or by both the fine and imprisonment.

(2) Any person who commits an assault upon the person of another with a firearm shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not less than six months and not exceeding one year, or by both a fine not exceeding ten thousand dollars ($10,000) and imprisonment.

(3) Any person who commits an assault upon the person of another with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276 or 12276.1, or a .50 BMG rifle, as defined in Section 12278, shall be punished by imprisonment in the state prison for 4, 8, or 12 years.

(b) Any person who commits an assault upon the person of another with a semiautomatic firearm shall be punished by imprisonment in the state prison for three, six, or nine years.

(c) Any person who commits an assault with a deadly weapon or instrument, other than a firearm, or by any means likely to produce great bodily injury upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for three, four, or five years.

(d) (1) Any person who commits an assault with a firearm upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter

is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for four, six, or eight years.

(2) Any person who commits an assault upon the person of a peace officer or firefighter with a semiautomatic firearm and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, when the peace officer or firefighter is engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for five, seven, or nine years.

(3) Any person who commits an assault with a machinegun, as defined in Section 12200, or an assault weapon, as defined in Section 12276 or 12276.1, or a .50 BMG rifle, as defined in Section 12278, upon the person of a peace officer or firefighter, and who knows or reasonably should know that the victim is a peace officer or firefighter engaged in the performance of his or her duties, shall be punished by imprisonment in the state prison for 6, 9, or 12 years.

(e) When a person is convicted of a violation of this section in a case involving use of a deadly weapon or instrument or firearm, and the weapon or instrument or firearm is owned by that person, the court shall order that the weapon or instrument or firearm be deemed a nuisance, and it shall be confiscated and disposed of in the manner provided by Section 12028.

(f) As used in this section, ''peace officer'' refers to any person designated as a peace officer in Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2.

SEC. 2. Section 12011 of the Penal Code is amended to read:

12011. The Prohibited Armed Persons File database shall function as follows:

(a) Upon entry into the Automated Criminal History System of a disposition for a conviction of any felony, a conviction for any firearms-prohibiting charge specified in Section 12021, a conviction for an offense described in Section 12021.1, a firearms prohibition pursuant to Section 8100 or 8103 of the Welfare and Institutions Code, or any firearms possession prohibition identified by the federal National Instant Check System, the Department of Justice shall determine if the subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1991, or an assault weapon registration, or a .50 BMG rifle registration.

(b) Upon an entry into any department automated information system that is used for the identification of persons who are prohibited from acquiring, owning, or possessing firearms, the department shall determine if the subject has an entry in the Consolidated Firearms Information System indicating ownership or possession of a firearm on

or after January 1, 1991, or an assault weapon registration, or a .50 BMG rifle registration.

(c) If the department determines that, pursuant to subdivision (a) or (b), the subject has an entry in the Consolidated Firearms Information System indicating possession or ownership of a firearm on or after January 1, 1991, or an assault weapon registration, or a .50 BMG rifle registration, the following information shall be entered into the Prohibited Armed Persons File:

(1) The subject's name.

(2) The subject's date of birth.

(3) The subject's physical description.

(4) Any other identifying information regarding the subject that is deemed necessary by the Attorney General.

(5) The basis of the firearms possession prohibition.

(6) A description of all firearms owned or possessed by the subject, as reflected by the Consolidated Firearms Information System.

SEC. 3. Section 12022 of the Penal Code is amended to read:

12022. (a) (1) Except as provided in subdivisions (c) and (d), any person who is armed with a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless the arming is an element of that offense. This additional term shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with a firearm, whether or not the person is personally armed with a firearm.

(2) Except as provided in subdivision (c), and notwithstanding subdivision (d), if the firearm is an assault weapon, as defined in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, or a .50 BMG rifle, as defined in Section 12278, the additional and consecutive term described in this subdivision shall be three years whether or not the arming is an element of the offense of which the person was convicted. The additional term provided in this paragraph shall apply to any person who is a principal in the commission of a felony or attempted felony if one or more of the principals is armed with an assault weapon or machinegun, or a .50 BMG rifle, whether or not the person is personally armed with an assault weapon or machinegun, or a .50 BMG rifle.

(b) (1) Any person who personally uses a deadly or dangerous weapon in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for one year, unless use of a deadly or dangerous weapon is an element of that offense.

(2) If the person described in paragraph (1) has been convicted of carjacking or attempted carjacking, the additional term shall be one, two, or three years.

(3) When a person is found to have personally used a deadly or dangerous weapon in the commission of a felony or attempted felony as provided in this subdivision and the weapon is owned by that person, the court shall order that the weapon be deemed a nuisance and disposed of in the manner provided in Section 12028.

(c) Notwithstanding the enhancement set forth in subdivision (a), any person who is personally armed with a firearm in the commission of a violation or attempted violation of Section 11351, 11351.5, 11352, 11366.5, 11366.6, 11378, 11378.5, 11379, 11379.5, or 11379.6 of the Health and Safety Code, shall be punished by an additional and consecutive term of imprisonment in the state prison for three, four, or five years.

(d) Notwithstanding the enhancement set forth in subdivision (a), any person who is not personally armed with a firearm who, knowing that another principal is personally armed with a firearm, is a principal in the commission of an offense or attempted offense specified in subdivision (c), shall be punished by an additional and consecutive term of imprisonment in the state prison for one, two, or three years.

(e) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

(f) Notwithstanding any other provision of law, the court may strike the additional punishment for the enhancements provided in subdivision (c) or (d) in an unusual case where the interests of justice would best be served, if the court specifies on the record and enters into the minutes the circumstances indicating that the interests of justice would best be served by that disposition.

SEC. 4. Section 12022.5 of the Penal Code is amended to read:

12022.5. (a) Except as provided in subdivision (b), any person who personally uses a firearm in the commission of a felony or attempted felony shall be punished by an additional and consecutive term of imprisonment in the state prison for 3, 4, or 10 years, unless use of a firearm is an element of that offense.

(b) Notwithstanding subdivision (a), any person who personally uses an assault weapon, as specified in Section 12276 or Section 12276.1, or a machinegun, as defined in Section 12200, in the commission of a felony or attempted felony, shall be punished by an additional and consecutive term of imprisonment in the state prison for 5, 6, or 10 years.

(c) Notwithstanding Section 1385 or any other provisions of law, the court shall not strike an allegation under this section or a finding bringing a person within the provisions of this section.

(d) Notwithstanding the limitation in subdivision (a) relating to being an element of the offense, the additional term provided by this section shall be imposed for any violation of Section 245 if a firearm is used, or for murder if the killing is perpetrated by means of shooting a firearm from a motor vehicle, intentionally at another person outside of the vehicle with the intent to inflict great bodily injury or death.

(e) When a person is found to have personally used a firearm, an assault weapon, a machinegun, or a .50 BMG rifle, in the commission of a felony or attempted felony as provided in this section and the firearm, assault weapon, machinegun, or a .50 BMG rifle, is owned by that person, the court shall order that the firearm be deemed a nuisance and disposed of in the manner provided in Section 12028.

(f) For purposes of imposing an enhancement under Section 1170.1, the enhancements under this section shall count as one, single enhancement.

SEC. 5. Section 12275 of the Penal Code is amended to read:

12275. This chapter shall be known as the Roberti-Roos Assault Weapons Control Act of 1989 and the .50 Caliber BMG Regulation Act of 2004.

SEC. 6. Section 12275.5 of the Penal Code is amended to read:

12275.5. (a) The Legislature hereby finds and declares that the proliferation and use of assault weapons poses a threat to the health, safety, and security of all citizens of this state. The Legislature has restricted the assault weapons specified in Section 12276 based upon finding that each firearm has such a high rate of fire and capacity for firepower that its function as a legitimate sports or recreational firearm is substantially outweighed by the danger that it can be used to kill and injure human beings. It is the intent of the Legislature in enacting this chapter to place restrictions on the use of assault weapons and to establish a registration and permit procedure for their lawful sale and possession. It is not, however, the intent of the Legislature by this chapter to place restrictions on the use of those weapons which are primarily designed and intended for hunting, target practice, or other legitimate sports or recreational activities.

(b) The Legislature hereby finds and declares that the proliferation and use of .50 BMG rifles, as defined in Section 12278, poses a clear and present terrorist threat to the health, safety, and security of all residents of, and visitors to, this state, based upon findings that those firearms have such a high capacity for long distance and highly destructive firepower that they pose an unacceptable risk to the death and serious injury of human beings, destruction or serious damage of vital public and private buildings, civilian, police and military vehicles, power generation and transmission facilities, petrochemical production and storage facilities, and transportation infrastructure. It is the intent of the Legislature in

enacting this chapter to place restrictions on the use of these rifles and to establish a registration and permit procedure for their lawful sale and possession.

SEC. 7. Section 12278 is added to the Penal Code, to read:

12278. (a) As used in this chapter, a ''.50 BMG rifle'' means a center fire rifle that can fire a .50 BMG cartridge and is not already an assault weapon pursuant to Section 12276, 12276.1, or 12276.5, or a machinegun, as defined in Section 12200.

(b) As used in this chapter, a ''.50 BMG cartridge'' means a cartridge that is designed and intended to be fired from a center fire rifle and that meets all of the following criteria:

(1) It has an overall length of 5.54 inches from the base to the tip of the bullet.

(2) The bullet diameter for the cartridge is from .510 to, and including, .511 inch.

(3) The case base diameter for the cartridge is from .800 inch to, and including, .804 inch.

(4) The cartridge case length is 3.91 inches.

(c) A ''.50 BMG rifle'' does not include any ''antique firearm,'' nor any curio or relic as defined in Section 178.11 of Title 27 of the Code of Federal Regulations.

(d) As used in this section, ''antique firearm'' means any firearm manufactured prior to January 1, 1899.

SEC. 8. 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 or any .50 BMG rifle, 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 or any .50 BMG rifle to a minor in violation of paragraph (1) shall receive an enhancement of one year.

(b) Any person who, within this state, possesses any assault weapon, except as provided in this chapter, is punishable by imprisonment in a county jail for a period not exceeding one year, or by imprisonment in the state prison. However, a first violation of these provisions is punishable by a fine not exceeding 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 an assault weapon pursuant to Section 12276, 12276.1, or 12276.5.

(2) The person has not previously been convicted of a violation of this section.

(3) The person was found to be in possession of the assault weapon within one year following the end of the one-year registration period established pursuant to subdivision (a) of Section 12285.

(4) The person relinquished the firearm pursuant to Section 12288, in which case the assault weapon shall be destroyed pursuant to Section 12028.

(c) Any person who, within this state, possesses any .50 BMG rifle, except as provided in this chapter, is punishable by a fine of one thousand dollars ($1,000), imprisonment in a county jail for a period not to exceed one year, or by both that fine and imprisonment. However, a first violation of these provisions is punishable by a fine not exceeding five hundred dollars ($500), if the person was found in possession of no more than two firearms in compliance with subdivision (a) of Section 12285 and the person meets the conditions set forth in paragraphs (1), (2), and (3):

(1) The person proves that he or she lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(2) The person has not previously been convicted of a violation of this section.

(3) The person was found to be in possession of the .50 BMG rifle within one year following the end of the .50 BMG rifle registration period established pursuant to subdivision (a) of Section 12285.

(4) Firearms seized pursuant to this subdivision from persons who meet all of the conditions set forth in paragraphs (1), (2), and (3) shall be returned unless the court finds in the interest of public safety, after notice and hearing, that the .50 BMG rifle should be destroyed pursuant to Section 12028. Firearms seized from persons who do not meet the conditions set forth in paragraphs (1), (2), and (3) shall be destroyed pursuant to Section 12028.

(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), (b), and (c) shall not apply to the sale to, purchase by, importation of, or possession of assault weapons or a .50 BMG rifle 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) Subdivisions (b) and (c) shall not prohibit the possession or use of assault weapons or a .50 BMG rifle by sworn peace officer members of those agencies specified in subdivision (e) for law enforcement purposes, whether on or off duty.

(2) Subdivisions (a), (b), and (c) shall not prohibit the delivery, transfer, or sale of an assault weapon or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle 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 or the .50 BMG rifle. 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. In the case of a peace officer who possesses or receives a .50 BMG rifle on or before January 1, 2005, the officer shall register the .50 BMG rifle on or before April 30, 2006. In the case of a peace officer who possesses or receives a .50 BMG rifle after January 1, 2005, the officer shall register the .50 BMG rifle not later than one year 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 or a .50 BMG rifle to, or the possession of an assault weapon or a .50 BMG rifle by, a member of a federal law enforcement agency provided that person is authorized by the employing agency to possess the assault weapon or .50 BMG rifle.

(g) Subdivision (b) shall not apply to the possession of an assault weapon 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 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), (b), and (c) shall not apply to the manufacture by persons who are issued permits pursuant to Section 12287 of assault weapons or .50 BMG rifles 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 or a .50 BMG rifle registered under Section 12285 or that was possessed pursuant to paragraph (1) of subdivision (f) which is disposed of as authorized by the probate court, if the disposition is otherwise permitted by this chapter.

(j) Subdivisions (b) and (c) shall not apply to a person who is the executor or administrator of an estate that includes an assault weapon or a .50 BMG rifle registered under Section 12285 or that was possessed pursuant to paragraph (1) of subdivision (f) if the assault weapon or .50 BMG rifle 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 or .50 BMG rifle pursuant to this chapter who lends that assault weapon or .50 BMG rifle to another if all the following apply:

(A) The person to whom the assault weapon or .50 BMG rifle 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 or .50 BMG rifle is lent remains in the presence of the registered possessor of the assault weapon or .50 BMG rifle.

(C) The assault weapon or .50 BMG rifle 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 or .50 BMG rifle to the registered possessor, or the lawful possessor, which is lent by the same pursuant to paragraph (1).

(*l*) Subdivisions (b) and (c) shall not apply to the possession of an assault weapon or .50 BMG rifle by a person to whom an assault weapon or .50 BMG rifle is lent pursuant to subdivision (k).

(m) Subdivisions (a), (b), and (c) shall not apply to the possession and importation of an assault weapon or a .50 BMG rifle 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 or a .50 BMG rifle.

(2) The competition or match is conducted on the premises of one of the following:

(A) A target range that holds a regulatory or business license for the purpose of practicing shooting at that target range.

(B) 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 or .50 BMG rifle 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) Subdivisions, (b) and (c) shall not apply to any of the following persons:

(1) A person acting in accordance with Section 12286 or 12287.

(2) A person who has a permit to possess an assault weapon or a .50 BMG rifle issued pursuant to Section 12286 or 12287 when he or she is acting in accordance with Section 12285, 12286, or 12287.

(o) Subdivisions (a), (b), and (c) 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, 12287, or 12290.

(p) Subdivisions (b) and (c) shall not apply to the registered owner of an assault weapon or a .50 BMG rifle 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 or a .50 BMG rifle by the registered owner of that assault weapon or a .50 BMG rifle, if it is in accordance with the provisions of subdivision (c) of Section 12285.

(r) Subdivision (a) shall not apply during the first 180 days of the 2005 calendar year to the importation into this state of a .50 BMG rifle by a person who lawfully possessed that .50 BMG rifle in this state prior to January 1, 2005.

(s) Subdivision (c) shall not apply to the possession of a .50 BMG rifle that is not defined or specified as an assault weapon pursuant to this chapter, by any person prior to May 1, 2006 if all of the following are applicable:

(1) The person is eligible under this chapter to register that .50 BMG rifle.

(2) The person lawfully possessed the .50 BMG rifle prior to January 1, 2005.

(3) The person is otherwise in compliance with this chapter.

(t) Subdivisions (a), (b) and (c) shall not apply to the sale of assault weapons or .50 BMG rifles 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 or .50 BMG rifles pursuant to subdivision (f).

(u) As used in this chapter, the date a firearm is an assault weapon is the earliest of the following:

(1) The effective date of an amendment to Section 12276 that adds the designation of the specified firearm.

(2) The effective date of the list promulgated pursuant to Section 12276.5 that adds or changes the designation of the specified firearm.

(3) The operative date of Section 12276.1, as specified in subdivision (d) of that section.

SEC. 9. Section 12285 of the Penal Code is amended to read:

12285. (a) (1) 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. The fees shall be deposited into the Dealers' Record of Sale Special Account.

(2) Except as provided in subdivision (a) of Section 12280, any person who lawfully possesses any .50 BMG rifle prior to January 1, 2005, that is not specified as an assault weapon under Section 12276 or 12276.5 or defined as an assault weapon pursuant to Section 12276.1, shall register the .50 BMG rifle with the department no later than April 30, 2006, 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 twenty-five dollars ($25) per person to cover the actual processing and public education campaign costs of the department. The fees shall be deposited into the Dealers' Record of Sale Special Account. Data-processing costs associated with modifying the department's data system to accommodate .50 caliber BMG rifles shall not be paid from the Dealers Record of Sale Special Account.

(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 paragraph (1) of 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.

(3) Except as provided in paragraph (4), no .50 BMG rifle possessed pursuant to this section may be sold or transferred on or after January 1, 2005, 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 obtains title to a .50 BMG rifle registered under this section or that was possessed pursuant to paragraph (1) of subdivision (f) of Section 12280 by bequest or intestate succession shall, within 180 days of receipt, 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.

(4) A person moving into this state, otherwise in lawful possession of a .50 BMG rifle, shall do one of the following:

(A) Prior to bringing the .50 BMG rifle 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 .50 BMG rifle 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 .50 BMG rifle to the person. If the licensed gun dealer, as defined in subdivision (c) of Section 12290 is prohibited from delivering the .50 caliber BMG rifle to a person pursuant to this paragraph, the dealer shall dispose of the .50 BMG rifle as allowed by this chapter.

(c) A person who has registered an assault weapon or registered a .50 BMG rifle 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, 12276.1, 12276.5, or 12278, is specifically permitted by the managing agency of the land.

(7) While transporting the assault weapon or .50 BMG rifle 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 or .50 BMG rifle.

(e) The department's registration procedures shall provide the option of joint registration for assault weapons or .50 BMG rifle 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) (1) 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.

(2) Any person who legally registered a firearm as an assault weapon pursuant to the provisions of law in effect prior to January 1, 2005, where the assault weapon is thereafter defined as a .50 caliber BMG rifle pursuant to Section 12278, 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. 10. Section 12286 of the Penal Code is amended to read:

12286. Any person who lawfully acquired an assault weapon before June 1, 1989, or a .50 BMG rifle before January 1, 2005, and wishes to use it in a manner different than specified in subdivision (c) of Section 12285, who lawfully acquired an assault weapon between June 1, 1989, and January 1, 1990, and wishes to keep it after January 1, 1990, or who wishes to acquire an assault weapon after January 1, 1990, or a .50 BMG rifle after January 1, 2005, 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.

SEC. 11. 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 or .50 BMG rifles for the sale to, purchase by, or possession of assault weapons or .50 BMG rifles 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. 12. Section 12288 of the Penal Code is amended to read:

12288. Any individual may arrange in advance to relinquish an assault weapon or a .50 BMG rifle to a police or sheriff's department. The assault weapon or .50 BMG rifle shall be transported in accordance with Section 12026.1.

SEC. 13. Section 12288.5 of the Penal Code is amended to read:

12288.5. (a) No peace officer or dispatcher shall broadcast over a police radio that an individual has registered, or has obtained a permit to possess, an assault weapon or .50 BMG rifle pursuant to this chapter, unless there exists a reason to believe in good faith that one of the following conditions exist:

(1) The individual has engaged, or may be engaged, in criminal conduct.

(2) The police are responding to a call in which the person allegedly committing a criminal violation may gain access to the assault weapon or .50 BMG rifle.

(3) The victim, witness, or person who reported the alleged criminal violation may be using the assault weapon or .50 BMG rifle to hold the person allegedly committing the criminal violation or may be using the weapon in defense of himself, herself, or other persons.

(b) This section shall not prohibit a peace officer or dispatcher from broadcasting over a police radio that an individual has not registered, or

has not obtained a permit to possess, an assault weapon or .50 BMG rifle pursuant to this chapter.

(c) This section does not limit the transmission of an assault weapon or a .50 BMG rifle ownership status via law enforcement computers or any other medium that is legally accessible only to peace officers or other authorized personnel.

SEC. 14. Section 12289 of the Penal Code is amended to read:

12289. (a) The Department of Justice shall conduct a public education and notification program regarding the registration of assault weapons and the definition of the weapons set forth in Section 12276.1. The public education and notification program shall include outreach to local law enforcement agencies and utilization of public service announcements in a variety of media approaches, to ensure maximum publicity of the limited forgiveness period of the registration requirement specified in subdivision (f) of Section 12285 and the consequences of nonregistration. The department shall develop posters describing gunowners' responsibilities under this chapter which shall be posted in a conspicuous place in every licensed gun store in the state during the forgiveness period. For .50 BMG rifles, the department's education campaign shall provide materials to dealers of .50 BMG rifles, and to recognized national associations that specialize in .50 BMG rifles.

(b) Any costs incurred by the Department of Justice to implement this section which cannot be absorbed by the department shall be funded from the Dealers' Record of Sale Special Account, as set forth in subdivision (d) of Section 12076, upon appropriation by the Legislature.

SEC. 15. 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 or .50 BMG rifle pursuant to Section 12285, in addition to the uses allowed in Section 12285, may transport the firearm between dealers or out of the state if that person is permitted pursuant to the National Firearms Act, 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 or .50 BMG rifle 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, as defined in subdivision (c), may transfer possession of any assault weapon or .50 BMG rifle 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 or .50 BMG rifle shall 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 or .50 BMG rifles pursuant to Section 12287.

SEC. 16. It is not the intent of the Legislature in amending Section 12280 of the Penal Code by this act to supersede, restrict, or affect the application of any other law, and to that end the amendments are cumulative. However, an act or omission punishable under different ways by these amended sections and other provisions of law shall not be punished under more than one provision.

SEC. 17. 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 495

An act to amend Sections 35277 and 35278 of the Education Code, relating to school districts.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 35277 of the Education Code is amended to read:

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) ''Eligible nonprofit corporation'' means a nonprofit public benefit corporation, nonprofit mutual benefit corporation, or a limited liability company in which the managing member is a nonprofit public benefit corporation or a nonprofit mutual benefit corporation.

(f) ''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.

(g) ''New schoolsite replacement housing'' means housing to replace the residential dwelling units demolished or to be demolished in connection with a new schoolsite.

(h) ''Persons and families of low income'' has the same meaning as set forth in Section 50093 of the Health and Safety Code.

(i) ''Persons and families of low or moderate income'' has the same meaning as set forth in Section 50093 of the Health and Safety Code.

(j) ''Very low income households'' has the same meaning as set forth in Section 50105 of the Health and Safety Code.

(k) ''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.

SEC. 2. Section 35278 of the Education Code is amended to read:

35278. (a) If a school district or community college district has acquired a new schoolsite containing residential dwelling units, the local governing agency, community college district, or eligible nonprofit corporation 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, community college district, or an eligible nonprofit corporation 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, community college district, or an eligible nonprofit corporation 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) (1) A local governing agency or eligible nonprofit corporation 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.

(2) A community college district or eligible nonprofit corporation may acquire real property for the purpose of new schoolsite replacement housing only from a willing seller.

(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, community college district, or eligible nonprofit corporation 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, community college district, eligible nonprofit corporation, 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, or community college district 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, or community college district, 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 or community college district 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, community college district, or eligible nonprofit corporation 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, community college district, or eligible nonprofit corporation 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 or community college district shall make available a draft of the proposed plan for review and comment by public agencies and the general public.

CHAPTER 496

An act to amend Section 13137 of, and to add Part 3 (commencing with Section 12750) to Division 11 of, the Health and Safety Code, and to amend Section 12301 of the Penal Code, relating to flamethrowing devices.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Part 3 (commencing with Section 12750) is added to Division 11 of the Health and Safety Code, to read:

PART 3. FLAMETHROWING DEVICES

CHAPTER 1. DEFINITIONS AND SCOPE

12750. For purposes of this part, the following definitions shall apply:

(a) ''Flamethrowing device'' means any nonstationary and transportable device designed or intended to emit or propel a burning stream of combustible or flammable liquid a distance of at least 10 feet.

(b) ''Permitholder'' means a person who holds a flamethrowing device permit issued pursuant to this part.

12755. No person shall use or possess a flamethrowing device without a valid flamethrowing device permit issued by the State Fire Marshal pursuant to this part.

12756. The State Fire Marshal shall adopt regulations to administer this part and establish standards for the background investigation of an applicant for, and holder of, a flamethrowing device permit, and for the use, storage, and transportation of a flamethrowing device. In adopting these regulations, the State Fire Marshal shall consult with the Department of Justice regarding regulations for the use and possession of destructive devices (Chapter 12.5 (commencing with Section 970) of Division 1 of Title 11 of the California Code of Regulations). These regulations for the use and possession of destructive devices may provide suggestions for potential methods to utilize in developing standards and shall serve as guidance only. At a minimum, the regulations adopted by the State Fire Marshal shall require a permitholder to possess a current, valid certificate of eligibility issued by the Department of Justice pursuant to paragraph (4) of subdivision (a) of Section 12071 of the Penal Code.

12757. The State Fire Marshal may issue or renew a permit to use and possess a flamethrowing device only if all of the following conditions are met:

(a) The applicant or permitholder is not addicted to any controlled substance.

(b) The applicant or permitholder possesses a current, valid certificate of eligibility issued by the Department of Justice pursuant to paragraph (4) of subdivision (a) of Section 12071 of the Penal Code.

(c) The applicant or permitholder meets the other standards specified in regulations adopted pursuant to Section 12756.

12758. (a) If the State Fire Marshal denies an application for, or the renewal of, or revokes a flamethrowing device permit, the applicant for a flamethrowing device permit or permitholder shall be entitled to a hearing conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code.

(b) The State Fire Marshal shall revoke a flamethrowing device permit if the permitholder does not comply with the requirements of this part and the regulations adopted pursuant to this part.

12759. The State Fire Marshal shall establish fees pursuant to this part that shall be deposited in the State Fire Marshal Licensing and Certification Fund.

CHAPTER 3. ENFORCEMENT AND PENALTIES

12760. The State Fire Marshal shall seize any flamethrowing device in the possession of any person who does not have a valid flamethrowing device permit issued pursuant to this part.

12761. Any person who uses or possesses any flamethrowing device without a valid flamethrowing device permit issued pursuant to this part is guilty of a public offense and, upon conviction, shall be punished by imprisonment in the county jail for a term not to exceed one year, or in the state prison, or by a fine not to exceed ten thousand dollars ($10,000), or by both imprisonment and fine.

SEC. 2. Section 13137 of the Health and Safety Code is amended to read:

13137. (a) The State Fire Marshal Licensing and Certification Fund is hereby created in the State Treasury. All money in the fund is available for the support of the State Fire Marshal upon appropriation by the Legislature. All moneys collected by the State Fire Marshal pursuant to this part, pursuant to Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11, and pursuant to Section 41961, shall be deposited in the fund and shall be available to the State Fire Marshal for expenditure upon appropriation by the Legislature for the purposes of this part, Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11, or Section 41961, respectively.

(b) Neither this article nor any provision of this part or Part 2 (commencing with Section 12500) or Part 3 (commencing with Section 12750) of Division 11 or Section 41961 authorize fees to exceed the actual cost of administration of the programs administered by the State Fire Marshal, nor authorize the charging of fees to a particular group being regulated under a program, for the costs of regulation under another program or for the costs of a different group under the same program.

SEC. 3. 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 479.11 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 479.11 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 that device, except those 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.

(b) The term ''explosive,'' as used in this chapter, shall mean any explosive defined in Section 12000 of the Health and Safety Code.

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 497

An act to repeal Division 10.25 (commencing with Section 10278) and Division 10.4 (commencing with Section 10285) of the Public Resources Code, and to amend Section 8557, 10644, and 10753.7 of the Water Code, relating to resources, making an appropriation therefor, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 2004. Filed with
Secretary of State September 14, 2004.]

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

SECTION 1. This act shall be known and may be cited as the Agriculture and Water Omnibus Act of 2003.

SEC. 2. Division 10.25 (commencing with Section 10278) of the Public Resources Code is repealed.

SEC. 3. Division 10.4 (commencing with Section 10285) of the Public Resources Code is repealed.

SEC. 4. Section 8557 of the Water Code is amended to read:

8557. The board shall have its office in the County of Sacramento. The office is the principal place of business and legal residence of the board and of the drainage district.

SEC. 5. Section 10644 of the Water Code is amended to read:

10644. (a) An urban water supplier shall submit to the department, the California State Library, and any city or county within which the supplier provides water supplies a copy of its plan no later than 30 days after adoption. Copies of amendments or changes to the plans shall be submitted to the department, the California State Library, and any city or county within which the supplier provides water supplies within 30 days after adoption.

(b) The department shall prepare and submit to the Legislature, on or before December 31, in the years ending in six and one, a report summarizing the status of the plans adopted pursuant to this part. The report prepared by the department shall identify the outstanding elements of the individual plans. The department shall provide a copy of the report to each urban water supplier that has submitted its plan to the department. The department shall also prepare reports and provide data for any legislative hearings designed to consider the effectiveness of plans submitted pursuant to this part.

SEC. 6. Section 10753.7 of the Water Code is amended to read:

10753.7. (a) For the purposes of qualifying as a groundwater management plan under this section, a plan shall contain the components that are set forth in this section. In addition to the requirements of a specific funding program, any local agency seeking state funds administered by the department for the construction of groundwater projects or groundwater quality projects, excluding programs that are funded under Part 2.78 (commencing with Section 10795), shall do all of the following:

(1) Prepare and implement a groundwater management plan that includes basin management objectives for the groundwater basin that is

subject to the plan. The plan shall include components relating to the monitoring and management of groundwater levels within the groundwater basin, groundwater quality degradation, inelastic land surface subsidence, and changes in surface flow and surface water quality that directly affect groundwater levels or quality or are caused by groundwater pumping in the basin.

(2) For the purposes of carrying out paragraph (1), the local agency shall prepare a plan to involve other agencies that enables the local agency to work cooperatively with other public entities whose service area or boundary overlies the groundwater basin.

(3) For the purposes of carrying out paragraph (1), the local agency shall prepare a map that details the area of the groundwater basin, as defined in the department's Bulletin No. 118, and the area of the local agency, that will be subject to the plan, as well as the boundaries of other local agencies that overlie the basin in which the agency is developing a groundwater management plan.

(4) The local agency shall adopt monitoring protocols that are designed to detect changes in groundwater levels, groundwater quality, inelastic surface subsidence for basins for which subsidence has been identified as a potential problem, and flow and quality of surface water that directly affect groundwater levels or quality or are caused by groundwater pumping in the basin. The monitoring protocols shall be designed to generate information that promotes efficient and effective groundwater management.

(5) Local agencies that are located in areas outside the groundwater basins delineated on the latest edition of the department's groundwater basin and subbasin map shall prepare groundwater management plans incorporating the components in this subdivision, and shall use geologic and hydrologic principles appropriate to those areas.

(b) (1) (A) A local agency may receive state funds administered by the department for the construction of groundwater projects or for other projects that directly affect groundwater levels or quality if it prepares and implements, participates in, or consents to be subject to, a groundwater management plan, a basinwide management plan, or other integrated regional water management program or plan that meets, or is in the process of meeting, the requirements of subdivision (a). A local agency with an existing groundwater management plan that meets the requirements of subdivision (a), or a local agency that completes an upgrade of its plan to meet the requirements of subdivision (a) within one year of applying for funds, shall be given priority consideration for state funds administered by the department over local agencies that are in the process of developing a groundwater management plan. The department shall withhold funds from the project until the upgrade of the groundwater management plan is complete.

(B) Notwithstanding subparagraph (A), a local agency that manages groundwater under any other provision of existing law that meets the requirements of subdivision (a), or that completes an upgrade of its plan to meet the requirements of subdivision (a) within one year of applying for funding, shall be eligible for funding administered by the department. The department shall withhold funds from a project until the upgrade of the groundwater management plan is complete.

(C) Notwithstanding subparagraph (A), a local agency that conforms to the requirements of an adjudication of water rights in the groundwater basin is in compliance with subdivision (a). For purposes of this section, an ''adjudication'' includes an adjudication under Section 2101, an administrative adjudication, and an adjudication in state or federal court.

(D) Subparagraphs (A) and (B) do not apply to proposals for funding under Part 2.78 (commencing with Section 10795), or to funds authorized or appropriated prior to September 1, 2002.

(2) Upon the adoption of a groundwater management plan in accordance with this part, the local agency shall submit a copy of the plan to the department, in an electronic format, if practicable, approved by the department. The department shall make available to the public copies of the plan received pursuant to this part.

SEC. 7. (a) Pursuant to Sections 14011 and 14012 of the Water Code, the Department of Water Resources may make grants from the California Safe Drinking Water Fund in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code) to the following entities in the following amounts for the purpose of financing domestic water system improvement projects to meet state and federal drinking water standards:

(1) El Nido Elementary School in Merced County for up to one hundred twenty-five thousand dollars ($125,000).

(2) Mattole Triple Junction High School in Humboldt County for up to one hundred eighty-five thousand dollars ($185,000).

(3) Orosi High School in Tulare County for up to four hundred thousand dollars ($400,000).

(4) Sequoia Union School District in Tulare County for up to four hundred thousand dollars ($400,000).

(5) Cuyama Elementary School in Santa Barbara County for up to one hundred fifty thousand dollars ($150,000).

(6) Maple School in Kern County for up to four hundred thousand dollars ($400,000).

(7) Roselawn High School in Stanislaus County for up to three hundred fifty thousand dollars ($350,000).

(8) Dehesa Elementary School in San Diego County for up to four hundred thousand dollars ($400,000).

(9) Lovell School in Tulare County for up to four hundred thousand dollars ($400,000).

(10) Citrus South Tule School in Tulare County for up to three hundred fifty thousand dollars ($350,000).

(11) Oasis School in Riverside County for up to one hundred twenty thousand dollars ($120,000).

(12) Kit Carson Elementary School in Kings County for up to three hundred fifty thousand dollars ($350,000).

(13) Piute Mountain School in Kern County for up to one hundred twenty-five thousand dollars ($125,000).

(14) Whale Gulch Elementary School in Mendocino County for up to one hundred twenty-five thousand dollars ($125,000).

(15) Pioneer Elementary School in Kings County for up to three hundred fifty thousand dollars ($350,000).

(b) The Department of Water Resources shall determine eligibility for, and the amount of, any grant authorized in subdivision (a) in accordance with the California Safe Drinking Water Bond Law of 1988 (Chapter 16 (commencing with Section 14000) of Division 7 of the Water Code), and may make those grants in accordance with that bond law.

SEC. 8. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to remedy critical water and special district funding problems, and to enhance agricultural land conservation, and thereby protect the public health and safety as soon as possible, it is necessary that this act take effect immediately.

CHAPTER 498

An act to add Section 8600.5 to the Water Code, relating to water.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 8600.5 is added to the Water Code, to read:

8600.5. (a) The governing body of a public entity that is authorized by law to construct, manage, maintain, or repair levees, channels, or other flood control works that are under the jurisdiction of the board may adopt standards for the operation and maintenance of those flood control

works that are more protective of public safety than the standards adopted by the board pursuant to Section 8608, including, but not limited to, standards that are more restrictive of encroachments on levees and adjacent areas.

(b) The standards adopted pursuant to subdivision (a) shall be effective upon approval by the board.

(c) The public entity shall apply the standards adopted pursuant to subdivision (a) prospectively.

(d) The governing body of the public entity may revise the standards adopted pursuant to subdivision (a) subject to the approval of the board. The board may unilaterally revise these standards upon 90 days' written notice to the public entity.

CHAPTER 499

An act to add Section 5626.3 to the Public Resources Code, relating to parks and recreation, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 5626.3 is added to the Public Resources Code, to read:

5626.3. Notwithstanding Sections 5625 and 5626, the County of Los Angeles may convert to a use not authorized under those provisions not more than 9.67 acres of parkland in El Cariso Park, if the county complies with the Public Park Preservation Act of 1971 (Chapter 2.5 (commencing with Section 5400)), and submits to the department a copy of all documents evidencing the county's interest in the substitute parkland required under the act.

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

In order to ensure that Mission College may expand in a timely manner to accommodate projected growth in student enrollment, it is necessary that this act take effect immediately.

CHAPTER 500

An act to amend Sections 42023.1, 42023.2, 42023.3, 42023.4, 42023.5, and 42023.6 of the Public Resources Code, relating to solid waste, and making an appropriation therefor.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 42023.1 of the Public Resources Code is amended to read:

42023.1. (a) The Recycling Market Development Revolving Loan Subaccount is hereby created in the account for the purpose of providing loans for purposes of the Recycling Market Development Revolving Loan Program established pursuant to this article.

(b) Notwithstanding Section 13340 of the Government Code, the funds deposited in the subaccount are hereby continuously appropriated to the board without regard to fiscal year for making loans pursuant to this article.

(c) The board may expend interest earnings on funds in the subaccount for administrative expenses incurred in carrying out the Recycling Market Development Revolving Loan Program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act.

(d) The money from any loan repayments and fees, including, but not limited to, principal and interest repayments, fees and points, recovery of collection costs, income earned on any asset recovered pursuant to a loan default, and funds collected through foreclosure actions, shall be deposited in the subaccount.

(e) All interest accruing on interest payments from loan applicants shall be deposited in the subaccount.

(f) The board may expend the money in the subaccount to make loans to local governing bodies, private businesses, and nonprofit entities within recycling market development zones, or in areas outside zones where partnerships exist with other public entities to assist local jurisdictions to comply with Section 40051.

(g) The board shall establish and collect fees for applications for loans authorized by this section. The application fee shall be set at a level that is sufficient to fund the board's cost of processing applications for loans. In addition, the board shall establish a schedule of fees, or points, for loans which are entered into by the board, to fund the board's administration of the revolving loan program.

(h) The board may expend money in the subaccount for the administration of the Recycling Market Development Revolving Loan Program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act. In addition, the board may expend money in the account to administer the revolving loan program, upon the appropriation of funds in the subaccount for that purpose in the annual Budget Act. However, funding for the administration of the revolving loan program from the account shall be provided only if there are not sufficient funds in the subaccount to fully fund the administration of the program.

(i) The board, pursuant to subdivision (a) of Section 47901, may set aside funds for the purposes of paying costs necessary to protect the state's position as a lender-creditor. These costs shall be broadly construed to include, but not be limited to, foreclosure expenses, auction fees, title searches, appraisals, real estate brokerage fees, attorney fees, mortgage payments, insurance payments, utility costs, repair costs, removal and storage costs for repossessed equipment and inventory, and additional expenditures to purchase a senior lien in foreclosure or bankruptcy proceedings.

(j) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 2. Section 42023.2 of the Public Resources Code is amended to read:

42023.2. (a) Upon authorization by the Legislature in the annual Budget Act, the Controller shall transfer a sum not to exceed five million dollars ($5,000,000) from the account to the subaccount as necessary to meet anticipated loan demand under the program. Those amounts shall be a loan to the subaccount, repayable with interest to the account at the rate of return for money in the Surplus Money Investment Fund.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 3. Section 42023.3 of the Public Resources Code is amended to read:

42023.3. (a) All money remaining in the subaccount on July 1, 2011, and all money received as repayment and interest on loans shall, as of July 1, 2011, be transferred to the account and any money due and outstanding on loans as of July 1, 2011, shall be repaid to the board and deposited by the board in the account until paid in full, except that, upon authorization by the Legislature in the annual Budget Act, interest earnings may be expended for administrative costs associated with the collection of outstanding loan accounts.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 4. Section 42023.4 of the Public Resources Code is amended to read:

42023.4. (a) Loans made pursuant to Section 42023.1 shall be subject to all of the following requirements:

(1) The terms of any approved loan shall be specified in a loan agreement between the borrower and the board. The loan agreement shall include a requirement that the failure to comply with the agreement shall result in any remaining unpaid amount of the loan, with accrued interest, being immediately due and payable. Notwithstanding any term of the agreement, any recipient of a loan that the board approves shall repay the principal amount, plus interest on the basis of the rate of return for money in the Surplus Money Investment Fund at the time of the loan commitment. Except as provided in subdivision (a) of Section 42023.3, all money received as repayment and interest on loans made pursuant to this section shall be deposited in the subaccount.

(2) The term of any loan made pursuant to this section shall be not more than 10 years when collateralized by assets other than real estate, or not more than 15 years when partially or wholly collateralized by real estate.

(3) The board shall approve only those loan applications that demonstrate the applicant's ability to repay the loan. The highest priority for funding shall be given to projects which demonstrate that the project will increase market demand for recycling the project's type of postconsumer waste material.

(4) The board shall finance not more than three-fourths of the cost of each project, or not more than two million dollars ($2,000,000) for each project, whichever is less.

(5) The Department of Finance may audit the expenditure of the proceeds of any loan made pursuant to Section 42023.1 and this section.

(b) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

SEC. 5. Section 42023.5 of the Public Resources Code is amended to read:

42023.5. (a) The board shall, as part of the annual report to the Legislature, pursuant to Section 40507, include a report on the performance of the Recycling Market Development Revolving Loan Program, including the number and size of loans made, characteristics of loan recipients, projected loan demand, and the cost of administering the program.

(b) This section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

SEC. 6. Section 42023.6 of the Public Resources Code is amended to read:

42023.6. (a) The board shall encourage applicants to seek participation from private financial institutions or other public agencies. For purposes of enabling the board and local agencies to comply with Sections 40051 and 41780, the board may participate, in an amount not to exceed five hundred thousand dollars ($500,000), in the Capital Access Loan Program as provided in Article 8 (commencing with Section 44559) of Chapter 1 of Division 27 of the Health and Safety Code.

(b) For purposes of participating in the Capital Access Loan Program, as specified in subdivision (a), or in any program that leverages subaccount funds, the board may operate both inside and outside the recycling market development zones.

(c) (1) Except as provided in paragraph (2), this section shall become inoperative on July 1, 2011, and as of January 1, 2012, is repealed, unless a later enacted statute, which becomes effective on or before January 1, 2012, deletes or extends the dates on which it becomes inoperative and is repealed.

(2) The repeal of this section pursuant to paragraph (1) shall not extinguish any loan obligation or the authority of the state to pursue appropriate actions for the collection of a loan.

CHAPTER 501

An act to amend Section 660 of, and to add and repeal Section 660.2 of the Harbors and Navigation Code, relating to vessels.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 660 of the Harbors and Navigation Code is amended to read:

660. (a) Any ordinance, law, regulation, or rule relating to vessels, which is adopted pursuant to provisions of law other than this chapter by any entity other than the department, including, but not limited to, any county, city, port authority, district, or any state agency other than the department, shall, notwithstanding any other provision of law, pertain only to time-of-day restrictions, speed zones, special-use areas, and sanitation and pollution control, and the measure shall not conflict with this chapter or the regulations adopted by the department. Except as provided in subdivision (c), any measure relating to boats or vessels adopted by any governmental entity other than the department shall be submitted to the department prior to adoption and at least 30 days prior to the effective date thereof.

(b) The department may make special rules and regulations governing the use of boats or vessels on any body of water within the territorial limits of two or more counties, cities, or other political subdivisions if no special rules or regulations exist or if the department determines that the local laws regulating the use of boats or vessels on that body of water are not uniform and that uniformity is practicable and necessary.

(c) (1) Any entity, including, but not limited to, any county, city, port authority, district, or state agency, otherwise authorized by law to adopt measures governing the use and equipment, and matters relating thereto, of boats or vessels, may adopt emergency rules and regulations that are not in conflict with the general laws of the state relating to boats and vessels using any waters within the jurisdiction of the entity if those emergency rules and regulations are required to ensure the safety of persons and property because of disaster or other public calamity.

(2) The emergency rules and regulations adopted under paragraph (1) shall become effective immediately upon adoption and may remain in effect for not to exceed 60 days thereafter. The emergency rules and regulations shall be submitted to the department on or before their adoption.

(3) After submission of emergency rules and regulations adopted pursuant to paragraph (1) to the department, the department may authorize the adopting entity to make the emergency rules and regulations effective for the period of time greater than 60 days that is necessary in view of the disaster or circumstances.

SEC. 2. Section 660.2 is added to the Harbors and Navigation Code, to read:

660.2. (a) Upon request of the Director of Fish and Game, or his or her designee, the department shall restrict or prohibit, based on the request, recreational vessel activity in Agua Hedionda Lagoon in San Diego County if that vessel activity would hinder or jeopardize the efforts of the Department of Fish and Game to control or eradicate Caulerpa taxifolia. Notice of the restriction or prohibition shall be posted conspicuously, and, at a minimum, in areas where boats are launched into the waterway where the restriction or prohibition is in effect. The operator of a vessel who violates any restrictions or prohibition pursuant to this subdivision is subject to a fine of not more than two hundred fifty dollars ($250).

(b) (1) The Director of Fish and Game, or his or her designee, shall inform the Department of Boating and Waterways regarding the date on which Caulerpa taxifolia has been eradicated from Agua Hedionda Lagoon.

(2) The Director of Fish and Game, or his or her designee, shall calculate the repeal date of this section by adding one year to the date provided to the Department of Boating and Waterways under paragraph (1), and shall notify the Secretary of State in writing of that repeal date, stating that the notification is being provided under this paragraph.

(c) This section shall remain in effect only until the repeal date calculated under paragraph (2) of subdivision (b), and as of that date is repealed, unless a later enacted statute that is enacted before that date deletes or extends that date.

CHAPTER 502

An act to add Section 23593 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 23593 is added to the Vehicle Code, to read:

23593. (a) The court shall advise a person convicted of a violation of Section 23103, as specified in Section 23103.5, or a violation of Section 23152 or 23153, as follows:

''You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder.''

(b) The advisory statement may be included in a plea form, if used, or the fact that the advice was given may be specied on the record.

(c) The court shall include on the abstract of the conviction or violation submitted to the department under Section 1803 or 1816, the fact that the person has been advised as required under subdivision (a).

CHAPTER 503

An act to amend Sections 7300.1, 7300.3, 7300.4, 7301.1, 7301.5, 7309.1, 7310, 7311, 7311.1, 7311.2, 7311.3, 7311.4, 7313, 7315, 7316, and 7324 of the Labor Code, relating to safety in employment.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 7300.1 of the Labor Code is amended to read:

7300.1. As used in this chapter:

(a) ''ASCE 21'' means the Automated People Mover Standards, as adopted by the American Society of Civil Engineers.

(b) ''ASME A17.1'' means the Safety Code for Elevators and Escalators, an American National Standard, as adopted by the American Society of Mechanical Engineers.

(c) ''ASME A17.3'' means the Safety Code for Existing Elevators and Escalators, an American National Standard, as adopted by the American Society of Mechanical Engineers.

(d) ''ASME A18.1'' means the Safety Standard for Platform Lifts and Stairway Chairlifts, an American National Standard, as adopted by the American Society of Mechanical Engineers.

(e) ''Automated people mover'' has the same meaning as defined in ASCE 21.

(f) ''Board'' or ''standards board'' means the Occupational Safety and Health Standards Board.

(g) ''Certified qualified conveyance company'' means any person, firm, or corporation that (1) possesses a valid contractor's license if required by Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code and (2) is certified as a qualified conveyance company by the division in accordance with this chapter.

(h) ''Certified competent conveyance mechanic'' means any person who has been determined by the division to have the qualifications and ability of a competent journey-level conveyance mechanic and is so certified by the division in accordance with this chapter.

(i) ''Conveyance'' means any elevator, dumbwaiter, escalator, moving platform lift, stairway chairlift, material lift or dumbwaiter with automatic transfer device, automated people mover, or other equipment subject to this chapter.

(j) ''Division'' means the Division of Occupational Safety and Health.

(k) ''Dormant elevator, dumbwaiter, or escalator'' means an installation placed out of service as specified in ASME A17.1 and ASME A18.1.

(*l*) ''Elevator'' means an installation defined as an ''elevator'' in ASME A17.1.

(m) ''Conveyance inspector'' means any conveyance safety inspector of the division or other conveyance inspector determined by the division to be qualified pursuant to this chapter.

(n) ''Escalator'' means an installation defined as an ''escalator'' in ASME A17.1.

(o) ''Existing installation'' means an installation defined as an ''installation, existing'' in ASME A17.1.

(p) ''Full maintenance service contract'' means an agreement by a certified competent conveyance company and the person owning or having the custody, management, or control of the operation of the conveyance, if the agreement provides that the certified competent conveyance company is responsible for effecting repairs necessary to the safe operation of the equipment and will provide services as frequently as is necessary, but no less often than monthly.

(q) ''Material alteration'' means an alteration as defined in ASME A17.1 or A18.1.

(r) ''Moving walk'' or ''moving sidewalk'' means an installation defined as a ''moving walk'' in ASME A17.1.

(s) ''Permit'' means a document issued by the division that indicates that the conveyance has had the required safety inspection and tests and fees have been paid as set forth in this chapter.

(t) ''Temporary permit'' means a document issued by the division which permits the use of a noncompliant conveyance by the general public for a limited time while minor repairs are being completed or until permit fees are paid.

(u) ''Repair'' has the same meaning as defined in ASME A17.1 or A18.1. A ''repair'' does not require a permit.

(v) ''Temporarily dormant elevator, dumbwaiter, or escalator'' means a conveyance, the power supply of which has been disconnected by removing fuses and placing a padlock on the mainline disconnect switch in the ''off'' position. In the case of an elevator or dumbwaiter, the car shall be parked and the hoistway doors shall be in the closed and latched position. A wire seal shall be installed on the mainline disconnect switch by a conveyance inspector of the division. The wire seal and padlock shall not be removed for any purpose without permission from a conveyance inspector of the division. A temporarily dormant elevator, dumbwaiter, or escalator shall not be used again until it has been put in safe running order and is in condition for use. Annual inspections by a conveyance inspector shall continue for the duration of the temporarily dormant status. Temporarily dormant status may be renewed annually, but shall not exceed five years. After each inspection, the conveyance inspector shall file a report with the chief of the division describing the current condition of the conveyance.

(w) The meanings of building transportation terms not otherwise defined in this section shall be as defined in the latest editions of ASME A17.1 and ASME A18.1.

SEC. 2. Section 7300.3 of the Labor Code is amended to read:

7300.3. Equipment not covered by this chapter includes the following:

(a) Material hoists within the scope of standard A10.5 as adopted by the American National Standards Institute.

(b) Mobile scaffolds, towers, and platforms within the scope of standard A92 as adopted by the American National Standards Institute.

(c) Powered platforms and equipment for exterior and interior maintenance within the scope of standard 120.1 as adopted by the American National Standards Institute.

(d) Cranes, derricks, hoists, hooks, jacks, and slings within the scope of standard B30 as adopted by the American Society of Mechanical Engineers.

(e) Industrial trucks within the scope of standard B56 as adopted by the American Society of Mechanical Engineers.

(f) Portable equipment, except for portable escalators that are covered by standard A17.1 as adopted by the American National Standards Institute.

(g) Tiering or piling machines used to move materials to and from storage located and operating entirely within one story.

(h) Equipment for feeding or positioning materials, including that equipment used with machine tools or printing presses.

(i) Skip or furnace hoists.

(j) Wharf ramps.

(k) Railroad car lifts or dumpers.

(*l*) Line jacks, false cars, shafters, moving platforms, and similar equipment used for installing a conveyance by a contractor licensed in this state.

SEC. 3. Section 7300.4 of the Labor Code is amended to read:

7300.4. This chapter does not apply to work that is not related to standards for conveyances that are (a) incorporated in codes promulgated by the American National Standards Institute or the American Society of Mechanical Engineers or (b) included in regulations of the division, in effect immediately prior to January 1, 2003, prescribing conveyance safety orders. Work exempted pursuant to this section includes, but is not limited to, routine nonmechanical maintenance, such as cleaning panels and changing light fixtures.

SEC. 4. Section 7301.1 of the Labor Code is amended to read:

7301.1. (a) On and after June 30, 2003, no conveyance may be erected, constructed, installed, or materially altered, as defined by regulation of the division, unless a permit has been obtained from the division before the work is commenced. A copy of the permit shall be kept at the construction site at all times while the work is in progress and shall be made available for inspection upon request. This section shall not apply to platform lifts and stairway chairlifts installed in a private residence as provided in paragraph (2) or (3) of subdivision (a) of Section 7317.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for a permit under this section, which shall include the following:

(1) At a minimum, the applicant for a permit under this section shall meet all of the following requirements:

(A) The applicant shall hold a current elevator contractor's license issued pursuant to Chapter 9 (commencing with Section 7000) of Division 3 of the Business and Professions Code.

(B) The applicant shall be a certified qualified conveyance company.

(C) The applicant shall submit proof of the following types of insurance coverage, in the form of certified copies of policies or certificates of insurance:

(i) Liability insurance to provide general liability coverage of not less than one million dollars ($1,000,000) for the injury or death of any one person or persons in any one occurrence, with coverage of not less than five hundred thousand dollars ($500,000) for property damage in any one occurrence.

(ii) Workers' compensation insurance coverage.

(D) In the event of any material alteration, nonrenewal, or cancellation of any insurance required by this subparagraph, the applicant or permitholder shall submit written notice thereof to the division within five working days.

(2) At a minimum, each application for a permit under this section shall include all of the following:

(A) Copies of specifications and accurately scaled and fully dimensioned plans showing the location of the installation in relation to the plans and elevation of the building; the location of the machinery room and the equipment to be installed, relocated, or altered; and all structural supporting members thereof, including foundations. The plans and specifications shall identify all materials to be employed and all loads to be supported or conveyed. The plans and specifications shall be sufficiently complete to illustrate all details of construction and design.

(B) The name, residence, and business address of the applicant and each partner, or for a corporation, the principal officers and anyone who is authorized to accept service of process or official notices; the number of years the applicant has engaged in the business of constructing, erecting, installing, or altering conveyances; and the approximate number of persons to be employed on the permitted job.

(C) The permit fee.

(3) The division shall establish, and may from time to time amend, a fee for a permit under this section in an amount sufficient to defray the division's actual costs in administering the permit process, including the costs of investigation, revocation, or other associated costs. Permit fees collected by the division are nonrefundable.

(c) (1) The permit shall expire when the work authorized by that permit is not commenced within six months after the date of issuance, or within a shorter period as the division may specify at the time the permit is issued.

(2) The permit shall expire following commencement of work, if the permitholder suspends or abandons the work for a period of 60 days, or for a shorter period of time as the division may specify at the time the permit is issued.

(3) Upon application and for good cause shown, the division may extend a permit that would otherwise expire under this subdivision.

(d) The division may revoke any permit at any time, upon good cause, and after notice and an opportunity to be heard.

SEC. 5. Section 7301.5 of the Labor Code is amended to read:

7301.5. (a) The standards board shall adopt regulations pertaining to conveyances, including, but not limited to, conveyance emergency and signal devices, and the operation of conveyances under fire and other emergency conditions.

(b) Before January 1, 2003, the division shall establish an application procedure and all requirements for certification under this subdivision as an emergency certified competent conveyance mechanic. To ensure the safety of the public when a disaster or other emergency exists within the state and the number of certified competent conveyance mechanics in the state is insufficient to cope with the emergency, any certified qualified conveyance company may, within five business days after commencing work requiring certified competent conveyance mechanics, apply to the division, on behalf of all persons performing the work who are not certified competent conveyance mechanics, for certification as emergency certified competent conveyance mechanics. Any person for whom emergency certification is sought under this subdivision shall be certified by a certified qualified conveyance company to have an acceptable combination of documented experience and education to perform work covered by this chapter without direct and immediate supervision. The certified qualified conveyance company shall furnish proof of competency as the division may require. The division shall issue an emergency certified competent conveyance mechanic certificate upon receipt of acceptable documentation and payment of the required fee. Each certificate issued pursuant to this subdivision shall recite that it is valid for a period of 30 days from the date of issuance and for those particular conveyances and geographical areas as the division may designate, and otherwise shall entitle the person being certified to the rights and privileges of a certified competent conveyance mechanic as set forth in this chapter. The division shall renew an emergency certified competent conveyance mechanic certificate during the existence of the emergency.

(c) Before January 1, 2004, the division shall establish an application procedure and all requirements for certification under this subdivision as a temporary certified competent conveyance mechanic. If there are no certified qualified conveyance mechanics available to perform elevator work, a certified qualified conveyance company may apply to the division for certification of one or more temporary certified competent conveyance mechanics. Any person seeking to work as a temporary certified competent conveyance mechanic shall, before beginning work, be approved by the division as having an acceptable combination of documented experience and education to perform work covered by this

chapter without direct and immediate supervision. The certified qualified conveyance company shall furnish proof of competency as the division may require. The division may issue a temporary certified competent conveyance mechanic certificate upon acceptable documentation and payment of the required fee. Each certificate issued pursuant to this subdivision shall recite that it is valid for a period of 30 days from the date of issuance and while the certificate holder is employed by the certified qualified conveyance company that certified the individual as competent. The certificate shall be renewable as long as the shortage of certified competent conveyance mechanics continues.

SEC. 6. Section 7309.1 of the Labor Code is amended to read:

7309.1. (a) On and after June 30, 2003, no conveyance subject to this chapter shall be reinspected by any person unless the person is a conveyance inspector employed by the division or certified as qualified by the division.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for the certification of conveyance inspectors. Each application for certification shall include information as the division may require and the applicable fee. At a minimum, the applicant shall present proof of certification as a qualified conveyance inspector by the American Society of Mechanical Engineers or proof of education and experience equivalent to what is required to obtain that certification from the American Society of Mechanical Engineers.

SEC. 7. Section 7310 of the Labor Code is amended to read:

7310. The division may also issue its permit or a permit may be issued on its behalf based upon a certificate of inspection issued by a conveyance inspector of any municipality, upon proof to the satisfaction of the division that the safety requirements of the municipality are equal to the minimum safety requirements for conveyances adopted by the board.

SEC. 8. Section 7311 of the Labor Code is amended to read:

7311. All persons inspecting conveyances shall first secure from the division a certificate of competency to make those inspections. The division may determine the competency of any applicant for the certificate, either by examination or by other satisfactory proof of qualifications. The division may rescind at any time, upon good cause being shown therefor, and after hearing, if requested, any certificate of competency issued by it to a conveyance inspector.

SEC. 9. Section 7311.1 of the Labor Code is amended to read:

7311.1. (a) On and after June 30, 2003, no conveyance subject to this chapter shall be erected, constructed, installed, materially altered, tested, maintained, repaired, or serviced by any person, firm, or corporation unless the person, firm, or corporation is certified by the division as a certified qualified conveyance company. A copy of the

certificate shall be kept at the site of the conveyance at all times while any work is in progress, and shall be made available for inspection upon request. However, certification under this section is not required for removing or dismantling conveyances that are destroyed as a result of the complete demolition of a secured building or structure or where the hoistway or wellway is demolished back to the basic support structure and no access is permitted that would endanger the safety of any person. This section does not apply to platform lifts and stairway chairlifts installed in a private residence as provided in paragraph (2) or (3) of subdivision (a) of Section 7317.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for certification under this section as a certified qualified conveyance company, consistent with this section. At a minimum, the individual qualifying on behalf of a corporation, the owner on behalf of a sole ownership, or the partners on behalf of a partnership, shall meet either of the following requirements:

(1) Five years' work experience at a journey person level in the conveyance industry in construction, installation, alteration, testing, maintenance, and service and repair of conveyances covered by this chapter. This experience shall be verified by current and previously licensed elevator contractors or by current and previously certified qualified conveyance companies.

(2) Satisfactory completion of a written examination administered by the division on the most recent applicable codes and standards.

(c) At a minimum, each application for certification as a certified qualified conveyance company shall include:

(1) The name, residence and business address, and telephone numbers and other means to contact the sole owner or each partner, or for a corporation of the principal officers and the individual qualifying for the corporation; the number of years the applicant business has engaged in the business of constructing, maintaining, and service and repair of conveyances; and other information as the division may require.

(2) The fee required by this chapter.

(d) Before bidding for or engaging in any work covered by this chapter, a certified qualified conveyance company shall submit proof to the division by certified copies of policies or certificates of insurance, of all of the following:

(1) Liability insurance providing general liability coverage of not less than one million dollars ($1,000,000) for injury or death of any one person or persons in any one occurrence, with coverage of not less than five hundred thousand dollars ($500,000) for property damage of any one person or persons in any one occurrence.

(2) Workers' compensation insurance coverage.

(3) In the event of any material alteration or cancellation of any policy specified in paragraph (1) or (2), the certified qualified conveyance company shall provide written notice thereof to the division within five working days.

SEC. 10. Section 7311.2 of the Labor Code is amended to read:

7311.2. (a) On and after June 30, 2003, except as provided in subdivisions (b) and (c) of Section 7301.5, any person who, without supervision, erects, constructs, installs, alters, tests, maintains, services or repairs, removes, or dismantles any conveyance covered by this chapter, shall be certified as a certified competent conveyance mechanic by the division. This section does not apply to platform lifts and stairway chairlifts installed in a private residence as provided in paragraph (2) or (3) of subdivision (a) of Section 7317.

(b) Before March 1, 2003, the division shall establish an application procedure and all requirements for certification under this section as a certified competent conveyance mechanic, consistent with all of the following:

(1) At a minimum, a certified competent conveyance mechanic applicant shall meet both of the following requirements:

(A) Three years' work experience in the conveyance industry in construction, maintenance, and service and repair of conveyances covered by this chapter. This experience shall be verified by current and previously licensed elevator contractors or by current and previously certified qualified conveyance companies, as required by the division.

(B) One of the following:

(i) Satisfactory completion of a written examination administered by the division on the most recent applicable codes and standards.

(ii) A certificate of completion and successfully passing the mechanic examination of a nationally recognized training program for the conveyance industry, such as the National Elevator Industry Educational Program or its equivalent.

(iii) A certificate of completion of an apprenticeship program for elevator mechanic, having standards substantially equal to those of this chapter, and which program shall be registered with the Bureau of Apprenticeship and Training of the United States Department of Labor or a state apprenticeship council.

(iv) A certificate or license from another state having standards substantially equal to or more comprehensive than those of this chapter.

(v) The applicant applies on or before December 31, 2003, and within the three years immediately prior to January 1, 2003, has documented at least three years of actual work experience in the conveyance industry in construction, maintenance, and service and repair of conveyances covered by this chapter. This experience shall be as a journey-level mechanic working without direct and immediate supervision, and shall

be verified by currently and previously licensed conveyance contractors or by current and previously certified qualified conveyance companies, as required by the division.

(2) At a minimum, each application for certification as a certified competent conveyance mechanic shall include the information required by the division and the fee required by this chapter.

SEC. 11. Section 7311.3 of the Labor Code is amended to read:

7311.3. (a) A certificate issued by the division to the certified qualified conveyance inspector, certified qualified conveyance company, or certified competent conveyance mechanic as set forth in Sections 7309.1, 7311.1, and 7311.2, shall have a term of two years. The fee for biennial renewal shall be established by the division in an amount sufficient to defray the division's costs of administering this chapter.

(b) The renewal of all certificates issued under this chapter shall be conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of certificate holders on new and existing provisions of the regulations of the board. This continuing education course shall consist of not less than eight hours of instruction that shall be attended and completed within one year immediately preceding any certificate renewal.

(c) The courses shall be taught by instructors through continuing education providers that may include, but not be limited to, division programs, association seminars, and joint labor-management apprenticeship and journeyman upgrade training programs. The division shall approve the continuing education providers and curriculum. All instructors shall be approved by the division and shall be exempt from the requirements of subdivision (b), provided that the applicant is qualified as an instructor at any time during the one-year period immediately preceding the scheduled date for renewal.

(d) A certificate holder who is unable to complete the continuing education course required under this section prior to the expiration of his or her certificate due to a temporary disability may apply for a waiver from the division. Waiver applications shall be submitted to the division on a form provided by the division. Waiver applications shall be signed and accompanied by a declaration signed by a competent physician attesting to the applicant's temporary disability. Upon the termination of the temporary disability, the certificate holder shall submit to the division a declaration from the same physician, if practicable, attesting to the termination of the temporary disability, and a waiver sticker, valid for 90 days, shall be issued to the certificate holder and affixed to his or her certificate.

(e) Continuing education providers approved by the division shall keep uniform records, for a period of 10 years, of attendance of certificate holders, following a format approved by the division. These

records shall be available for inspection by the division at its request. Approved continuing education providers shall keep secure all attendance records and certificates of completion. Falsifying or knowingly allowing another to falsify attendance records or certificates of completion of continuing education provided pursuant to this section shall constitute grounds for suspension or revocation of the approval required under this section.

SEC. 12. Section 7311.4 of the Labor Code is amended to read:

7311.4. (a) The division shall establish fees for initial and renewal applications for certification under this chapter as a certified qualified conveyance inspector, certified qualified conveyance company, or certified competent conveyance mechanic based upon the actual costs involved with the certification process, including the cost of developing and administering any tests as well as any costs related to continuing education, investigation, revocation, or other associated costs.

(b) Fees collected pursuant to this chapter are nonrefundable.

SEC. 13. Section 7313 of the Labor Code is amended to read:

7313. Each conveyance inspector shall, within 21 days after he or she makes an inspection, forward to the division on forms provided by it, a report of the inspection. Failure to comply with this section shall be grounds for the division to cancel his or her certificate.

SEC. 14. Section 7315 of the Labor Code is amended to read:

7315. Fees shall be paid before the issuance of any permit to operate a conveyance, but a temporary permit may be issued pending receipt of fee payment. No fee may be charged by the division where an inspection has been made by an inspector of an insurance company or municipality if that inspector holds a certificate as a conveyance inspector and an inspection report is filed with the division within 21 days after inspection is made.

SEC. 15. Section 7316 of the Labor Code is amended to read:

7316. All fees collected by the division under this chapter shall be paid into the Elevator Safety Account which is hereby created for the administration of the division's conveyance safety program. The division shall establish criteria upon which fee charges are based and prepare an annual report concerning revenues obtained and expenditures appropriated for the conveyance safety program. The division shall file the report with the Legislative Analyst, the Joint Legislative Audit Committee, and the Department of Finance.

SEC. 16. Section 7324 of the Labor Code is amended to read:

7324. Individuals, firms, or companies certified as described in this chapter shall ensure that installation, service, and maintenance of conveyances are performed in compliance with the provisions contained

in the State Fire Prevention and Building Code and with generally accepted standards referenced in that code.

CHAPTER 504

An act to add Section 3522 to the Government Code, relating to state employees.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

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

(a) Physicians employed by the state often seek to attend specialty conferences held outside the state in order to comply with the continuing medical education requirement imposed by the state.

(b) Under existing law, state physicians are required to receive prior approval before attending many out-of-state continuing medical education classes, but often have not received the approval in time to attend the classes.

(c) Therefore, it is the intent of the Legislature to assist state physicians to become more proficient in their field by enhancing access to out-of-state training.

SEC. 2. Section 3522 is added to the Government Code, to read:

3522. (a) Physicians in any state bargaining unit may negotiate under this chapter for preauthorized travel outside the state for continuing medical education.

(b) The execution of a memorandum of understanding entered into pursuant to subdivision (a) shall constitute the approvals required under Sections 11032 and 11033, except that if the provisions of a memorandum of understanding require the expenditure of funds, the provisions shall not become effective unless approved by the Legislature in the annual Budget Act.

CHAPTER 505

An act to add Section 23125 to the Vehicle Code, relating to vehicles.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 23125 is added to the Vehicle Code, to read:

23125. (a) A person may not drive a schoolbus or transit vehicle, as defined in subdivision (g) of Section 99247 of the Public Utilities Code, while using a wireless telephone.

(b) This section does not apply to a driver using a wireless telephone for work-related purposes, or for emergency purposes, including, but not limited to, an emergency call to a law enforcement agency, health care provider, fire department, or other emergency service agency or entity.

(c) Notwithstanding any other provision of law, a violation of subdivision (a) does not constitute a serious traffic violation within the meaning of subdivision (i) of Section 15210.

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 506

An act to amend Sections 7480, 21267, and 31452.6 of, and to add Section 21510 to, the Government Code, relating to retirement systems.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or

district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this

subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(d) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(e) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(f) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134, 50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(g) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(h) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(j) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under

this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(k) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its

response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(*l*) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.

(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial

information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

(m) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

(n) When the Governing Board of the Public Employees' Retirement System or, the State Teachers' Retirement System certifies in writing to a financial institution that a benefit recipient has died and that transfers to the benefit recipient's account at the financial institution from the retirement system occurred after the benefit recipient's date of death, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of the benefit recipients death, or if the account has been closed, the name and address of the person who closed the account.

(o) When the retirement board of a retirement system established under the County Employees Retirement Law of 1937 certifies in writing to a financial institution that a retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or beneficiary of a retired member, the financial institution shall furnish the retirement system the name and address of

any coowner, cosigner, or any other person who had access to the funds in the account following the date of death of the retired member or beneficiary of a retired member, or if the account has been closed, the name and address of the person who closed the account.

SEC. 1.5. Section 7480 of the Government Code is amended to read:

7480. Nothing in this chapter prohibits any of the following:

(a) The dissemination of any financial information that is not identified with, or identifiable as being derived from, the financial records of a particular customer.

(b) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association in this state, the police or sheriff's department or district attorney may request a bank, credit union, or savings association to furnish, and a bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(c) When any police or sheriff's department or district attorney in this state certifies to a bank, credit union, or savings association in writing that a crime report has been filed that involves the alleged fraudulent use of drafts, checks, or other orders drawn upon any bank, credit union, or savings association doing business in this state, the police or sheriff's department or district attorney may request, with the consent of the accountholder, the bank, credit union, or savings association to furnish,

and the bank, credit union, or savings association shall furnish, a statement setting forth the following information with respect to a customer account specified by the police or sheriff's department or district attorney for a period 30 days prior to, and up to 30 days following, the date of occurrence of the alleged illegal act involving the account:

(1) The number of items dishonored.

(2) The number of items paid that created overdrafts.

(3) The dollar volume of the dishonored items and items paid which created overdrafts and a statement explaining any credit arrangement between the bank, credit union, or savings association and customer to pay overdrafts.

(4) The dates and amounts of deposits and debits and the account balance on these dates.

(5) A copy of the signature card, including the signature and any addresses appearing on a customer's signature card.

(6) The date the account opened and, if applicable, the date the account closed.

(7) A bank, credit union, or savings association doing business in this state that provides the requesting party with copies of one or more complete account statements prepared in the regular course of business shall be deemed to be in compliance with paragraphs (1), (2), (3), and (4).

(d) For purposes of subdivision (c), consent of the accountholder shall be satisfied if an accountholder provides to the financial institution and the person or entity seeking disclosure, a signed and dated statement containing all of the following:

(1) Authorization of the disclosure for the period specified in subdivision (c).

(2) The name of the agency or department to which disclosure is authorized and, if applicable, the statutory purpose for which the information is to be obtained.

(3) A description of the financial records that are authorized to be disclosed.

(e) (1) The Attorney General, a supervisory agency, the Franchise Tax Board, the State Board of Equalization, the Employment Development Department, the Controller or an inheritance tax referee when administering the Prohibition of Gift and Death Taxes (Part 8 (commencing with Section 13301) of Division 2 of the Revenue and Taxation Code), a police or sheriff's department or district attorney, a county welfare department when investigating welfare fraud, a county auditor-controller or director of finance when investigating fraud against the county, or the Department of Corporations when conducting investigations in connection with the enforcement of laws administered

by the Commissioner of Corporations, from requesting of an office or branch of a financial institution, and the office or branch from responding to a request, as to whether a person has an account or accounts at that office or branch and, if so, any identifying numbers of the account or accounts.

(2) No additional information beyond that specified in this section shall be released to a county welfare department without either the accountholder's written consent or a judicial writ, search warrant, subpoena, or other judicial order.

(3) A county auditor-controller or director of finance who unlawfully discloses information he or she is authorized to request under this subdivision is guilty of the unlawful disclosure of confidential data, a misdemeanor, which shall be punishable as set forth in Section 7485.

(f) The examination by, or disclosure to, any supervisory agency of financial records that relate solely to the exercise of its supervisory function. The scope of an agency's supervisory function shall be determined by reference to statutes that grant authority to examine, audit, or require reports of financial records or financial institutions as follows:

(1) With respect to the Commissioner of Financial Institutions by reference to Division 1 (commencing with Section 99), Division 1.5 (commencing with Section 4800), Division 2 (commencing with Section 5000), Division 5 (commencing with Section 14000), Division 7 (commencing with Section 18000), Division 15 (commencing with Section 31000), and Division 16 (commencing with Section 33000) of the Financial Code.

(2) With respect to the Controller by reference to Title 10 (commencing with Section 1300) of Part 3 of the Code of Civil Procedure.

(3) With respect to the Administrator of Local Agency Security by reference to Article 2 (commencing with Section 53630) of Chapter 4 of Part 1 of Division 2 of Title 5 of the Government Code.

(g) The disclosure to the Franchise Tax Board of (1) the amount of any security interest that a financial institution has in a specified asset of a customer or (2) financial records in connection with the filing or audit of a tax return or tax information return that are required to be filed by the financial institution pursuant to Part 10 (commencing with Section 17001), Part 11 (commencing with Section 23001), or Part 18 (commencing with Section 38001) of the Revenue and Taxation Code.

(h) The disclosure to the State Board of Equalization of any of the following:

(1) The information required by Sections 6702, 6703, 8954, 8957, 30313, 30315, 32383, 32387, 38502, 38503, 40153, 40155, 41122, 41123.5, 43443, 43444.2, 44144, 45603, 45605, 46404, 46406, 50134,

50136, 55203, 55205, 60404, and 60407 of the Revenue and Taxation Code.

(2) The financial records in connection with the filing or audit of a tax return required to be filed by the financial institution pursuant to Part 1 (commencing with Section 6001), Part 2 (commencing with Section 7301), Part 3 (commencing with Section 8601), Part 13 (commencing with Section 30001), Part 14 (commencing with Section 32001), and Part 17 (commencing with Section 37001) of Division 2 of the Revenue and Taxation Code.

(3) The amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(i) The disclosure to the Controller of the information required by Section 7853 of the Revenue and Taxation Code.

(j) The disclosure to the Employment Development Department of the amount of any security interest a financial institution has in a specified asset of a customer, if the inquiry is directed to the branch or office where the interest is held.

(k) The disclosure by a construction lender, as defined in Section 3087 of the Civil Code, to the Registrar of Contractors, of information concerning the making of progress payments to a prime contractor requested by the registrar in connection with an investigation under Section 7108.5 of the Business and Professions Code.

(*l*) Upon receipt of a written request from a local child support agency referring to a support order pursuant to Section 17400 of the Family Code, a financial institution shall disclose the following information concerning the account or the person named in the request, whom the local child support agency shall identify, whenever possible, by social security number:

(1) If the request states the identifying number of an account at a financial institution, the name of each owner of the account.

(2) Each account maintained by the person at the branch to which the request is delivered, and, if the branch is able to make a computerized search, each account maintained by the person at any other branch of the financial institution located in this state.

(3) For each account disclosed pursuant to paragraphs (1) and (2), the account number, current balance, street address of the branch where the account is maintained, and, to the extent available through the branch's computerized search, the name and address of any other person listed as an owner.

(4) Whenever the request prohibits the disclosure, a financial institution shall not disclose either the request or its response, to an owner of the account or to any other person, except the officers and employees of the financial institution who are involved in responding to

the request and to attorneys, employees of the local child support agencies, auditors, and regulatory authorities who have a need to know in order to perform their duties, and except as disclosure may be required by legal process.

(5) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information in response to a request pursuant to this subdivision, (B) failing to notify the owner of an account, or complying with a request under this paragraph not to disclose to the owner, the request or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the request pursuant to a computerized search of the records of the financial institution.

(6) The local child support agency may request information pursuant to this subdivision only when the local child support agency has received at least one of the following types of physical evidence:

(A) Any of the following, dated within the last three years:

(i) Form 599.

(ii) Form 1099.

(iii) A bank statement.

(iv) A check.

(v) A bank passbook.

(vi) A deposit slip.

(vii) A copy of a federal or state income tax return.

(viii) A debit or credit advice.

(ix) Correspondence that identifies the child support obligor by name, the bank, and the account number.

(x) Correspondence that identifies the child support obligor by name, the bank, and the banking services related to the account of the obligor.

(xi) An asset identification report from a federal agency.

(B) A sworn declaration of the custodial parent during the 12 months immediately preceding the request that the person named in the request has had or may have had an account at an office or branch of the financial institution to which the request is made.

(7) Information obtained by a local child support agency pursuant to this subdivision shall be used only for purposes that are directly connected with the administration of the duties of the local child support agency pursuant to Section 17400 of the Family Code.

(m) (1) As provided in paragraph (1) of subdivision (c) of Section 666 of Title 42 of the United States Code, upon receipt of an administrative subpoena on the current federally approved interstate child support enforcement form, as approved by the federal Office of Management and Budget, a financial institution shall provide the information or documents requested by the administrative subpoena.

(2) The administrative subpoena shall refer to the current federal Office of Management and Budget control number and be signed by a person who states that he or she is an authorized agent of a state or county agency responsible for implementing the child support enforcement program set forth in Part D (commencing with Section 651) of Subchapter IV of Chapter 7 of Title 42 of the United States Code. A financial institution may rely on the statements made in the subpoena and has no duty to inquire into the truth of any statement in the subpoena.

(3) If the person who signs the administrative subpoena directs a financial institution in writing not to disclose either the subpoena or its response to any owner of an account covered by the subpoena, the financial institution shall not disclose the subpoena or its response to the owner.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for (A) disclosing information or providing documents in response to a subpoena pursuant to this subdivision, (B) failing to notify any owner of an account covered by the subpoena or complying with a request not to disclose to the owner, the subpoena or disclosure under this subdivision, or (C) failing to discover any account owned by the person named in the subpoena pursuant to a computerized search of the records of the financial institution.

(n) The dissemination of financial information and records pursuant to any of the following:

(1) Compliance by a financial institution with the requirements of Section 2892 of the Probate Code.

(2) Compliance by a financial institution with the requirements of Section 2893 of the Probate Code.

(3) An order by a judge upon a written ex parte application by a peace officer showing specific and articulable facts that there are reasonable grounds to believe that the records or information sought are relevant and material to an ongoing investigation of a felony violation of Section 186.10 or of any felony subject to the enhancement set forth in Section 186.11.

(A) The ex parte application shall specify with particularity the records to be produced, which shall be only those of the individual or individuals who are the subject of the criminal investigation.

(B) The ex parte application and any subsequent judicial order shall be open to the public as a judicial record unless ordered sealed by the court, for a period of 60 days. The sealing of these records may be extended for 60-day periods upon a showing to the court that it is necessary for the continuance of the investigation. Sixty-day extensions may continue for up to one year or until termination of the investigation of the individual or individuals, whichever is sooner.

(C) The records ordered to be produced shall be returned to the peace officer applicant or his or her designee within a reasonable time period after service of the order upon the financial institution.

(D) Nothing in this subdivision shall preclude the financial institution from notifying a customer of the receipt of the order for production of records unless a court orders the financial institution to withhold notification to the customer upon a finding that the notice would impede the investigation.

(E) Where a court has made an order pursuant to this paragraph to withhold notification to the customer under this paragraph, the peace officer or law enforcement agency who obtained the financial information shall notify the customer by delivering a copy of the ex parte order to the customer within 10 days of the termination of the investigation.

(4) No financial institution, or any officer, employee, or agent thereof, shall be liable to any person for any of the following:

(A) Disclosing information to a probate court pursuant to Sections 2892 and 2893.

(B) Disclosing information in response to a court order pursuant to paragraph (3).

(C) Complying with a court order under this subdivision not to disclose to the customer, the order, or the dissemination of information pursuant to the court order.

(o) Disclosure by a financial institution to a peace officer, as defined in Section 830.1 of the Penal Code, pursuant to the following:

(1) Paragraph (1) of subdivision (a) of Section 1748.95 of the Civil Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 1748.95 of the Civil Code.

(2) Paragraph (1) of subdivision (a) of Section 4002 of the Financial Code, provided that the financial institution has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 4002 of the Financial Code.

(3) Paragraph (1) of subdivision (a) of Section 22470 of the Financial Code, provided that any financial institution that is a finance lender has first complied with the requirements of paragraph (2) of subdivision (a) and subdivision (b) of Section 22470 of the Financial Code.

(p) When the Governing Board of the Public Employees' Retirement System or the State Teachers' Retirement System certifies in writing to a financial institution that a benefit recipient has died and that transfers to the benefit recipient's account at the financial institution from the retirement system occurred after the benefit recipient's date of death, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access

to the funds in the account following the date of the benefit recipient's death, or if the account has been closed, the name and address of the person who closed the account.

(q) When the retirement board of a retirement system established under the County Employees Retirement Law of 1937 certifies in writing to a financial institution that a retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or beneficiary of a retired member, the financial institution shall furnish the retirement system the name and address of any coowner, cosigner, or any other person who had access to the funds in the account following the date of death of the retired member or beneficiary of a retired member, or if the account has been closed, the name and address of the person who closed the account.

SEC. 2. Section 21267 of the Government Code is amended to read:

21267. (a) Notwithstanding any other provision of law, any person entitled to the receipt of benefits from any state retirement system may authorize the payment of the benefits to be directly deposited by electronic fund transfer into the person's account at the financial institution of his or her choice under a program for direct deposit by electronic transfer established pursuant to Section 21268. The direct deposit shall discharge the state agency's obligation with respect to that payment.

(b) Any payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to the receipt of the benefits from a state retirement system shall be refunded to the retirement system.

SEC. 3. Section 21510 is added to the Government Code, to read:

21510. Any payment of benefits by warrant issued after the date of death of the benefit recipient shall be refunded to the retirement system.

SEC. 4. Section 31452.6 of the Government Code is amended to read:

31452.6. (a) The board shall comply with and give effect to a revocable written authorization signed by a retired member or beneficiary of a retired member entitled to a retirement allowance or benefit under this chapter, authorizing the treasurer or other entity authorized by the board to deliver the monthly warrant, check, or electronic fund transfer, for the retirement allowance or benefit to any specified bank, savings and loan institution, or credit union to be credited to the account of the retired member or survivor of a deceased retired member. That delivery is full discharge of the liability of the board to pay a monthly retirement allowance or benefit to the retired member or survivor of a deceased retired member.

(b) Any payments directly deposited by electronic fund transfer following the date of death of a person who was entitled to receive a retirement allowance or benefit under this chapter shall be refunded to the retirement system.

(c) In order to obtain information from a financial institution following the death of a retired member or the beneficiary of a retired member, as provided in subdivision (o) of Section 7480, the board may certify in writing to the financial institution that the retired member or the beneficiary of a retired member has died and that transfers to the account of the retired member or beneficiary of a retired member at the financial institution from the retirement system occurred after the date of death of the retired member or the beneficiary of a retired member.

SEC. 5. Section 1.5 of this bill incorporates amendments to Section 7480 of the Government Code proposed by both this bill and AB 1776. It shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2005, (2) each bill amends Section 7480 of the Government Code, and (3) this bill is enacted after AB 1776, in which case Section 1 of this bill shall not become operative.

CHAPTER 507

An act to add Section 964 to the Penal Code, relating to police reports, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 964 is added to the Penal Code, to read:

964. (a) In each county, the district attorney and the courts, in consultation with any local law enforcement agencies that may desire to provide information or other assistance, shall establish a mutually agreeable procedure to protect confidential personal information regarding any witness or victim contained in a police report, arrest report, or investigative report if one of these reports is submitted to a court by a prosecutor in support of a criminal complaint, indictment, or information, or by a prosecutor or law enforcement officer in support of a search warrant or an arrest warrant.

(b) For purposes of this section, ''confidential personal information'' includes, but is not limited to, an address, telephone number, driver's license or California Identification Card number, social security number, date of birth, place of employment, employee identification number,

mother's maiden name, demand deposit account number, savings or checking account number, or credit card number.

(c) (1) This section may not be construed to impair or affect the provisions of Chapter 10 (commencing with Section 1054) of Title 6 of Part 2.

(2) This section may not be construed to impair or affect procedures regarding informant disclosure provided by Sections 1040 to 1042, inclusive, of the Evidence Code, or as altering procedures regarding sealed search warrant affidavits as provided by People v. Hobbs (1994) 7 Cal.4th 948.

(3) This section shall not be construed to impair or affect a criminal defense counsel's access to unredacted reports otherwise authorized by law, or the submission of documents in support of a civil complaint.

(4) This section applies as an exception to California Rule of Court 243.1, as provided by paragraph (2) of subdivision (a) of that rule.

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

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

In order to protect the safety and privacy of victims and witnesses of crimes, to encourage witnesses to come forward and report crimes, and to combat the efforts of identity thieves to obtain the personal identifying information of California citizens, it is necessary that this act go into immediate effect.

CHAPTER 508

An act to amend Section 13610 of the Water Code, relating to water.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 13610 of the Water Code is amended to read:

13610. Unless the context otherwise requires, the definitions set forth in this section govern the construction of this chapter:

(a) (1) Subject to paragraph (2), ''perchlorate'' means all perchlorate-containing compounds, including ammonium, potassium, magnesium, and sodium perchlorate.

(2) Perchlorate does not include perchlorate located in unused military munitions, as defined in Section 260.10 of Title 40 of the Code of Federal Regulations, that were stored on or after January 1, 2004.

(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 6055.9-STD (Department of Defense Ammunition and Explosives Safety Standards), 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.

CHAPTER 509

An act to add Section 1271.15 to the Health and Safety Code, and to add Section 5675.2 to the Welfare and Institutions Code, relating to mental health.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 1271.15 is added to the Health and Safety Code, immediately following Section 1271.1, to read:

1271.15. (a) Notwithstanding any provision of law to the contrary, including, but not limited to, Section 1271.1, a health facility may do any of the following:

(1) (A) It may place all or a portion of its licensed bed capacity in voluntary suspension for the purposes of using the facility to operate a licensed mental health rehabilitation center pursuant to Section 5675 of the Welfare and Institutions Code after submitting written notification to the State Department of Health Services and to the Office of Statewide Health Planning and Development. During the period of voluntary suspense, the facility shall remain under the jurisdiction of the office. The office shall enforce both the mental health rehabilitation center

requirements and the health facility requirements of the California Building Standards Code.

(B) A mental health rehabilitation center operating under this paragraph may remove all or any portion of its voluntarily suspended bed capacity from voluntary suspension by submitting a request to the State Department of Health Services.

(C) The department shall grant the request under subparagraph (B) to remove bed capacity from voluntary suspension and to reinstatement of the health facility bed capacity, unless the facility fails to meet currently applicable operational requirements for a health facility.

(b) This section authorizes the voluntary suspension of bed capacity or surrender of a license by a health facility only for the purpose of converting the facility for use as a licensed mental health rehabilitation center pursuant to Section 5675 of the Welfare and Institutions Code.

SEC. 2. Section 5675.2 is added to the Welfare and Institutions Code, to read:

5675.2. (a) Commencing January 1, 2005, each new and renewal application for a license to operate a mental health rehabilitation center shall be accompanied by an application or renewal fee.

(b) The amount of the fees shall be determined and collected by the State Department of Mental Health, but the total amount of the fees collected shall not exceed the actual costs of licensure and regulation of the centers, including, but not limited to, the costs of processing the application, inspection costs, and other related costs.

(c) Each license or renewal issued pursuant to this chapter shall expire 12 months from the date of issuance. Application for renewal of the license shall be accompanied by the necessary fee and shall be filed with the department at least 30 days prior to the expiration date. Failure to file a timely renewal may result in expiration of the license.

(d) License and renewal fees collected pursuant to this section shall be deposited into the General Fund.

CHAPTER 510

An act to amend Section 830.33 of the Penal Code, relating to peace officers.

[Approved by Governor September 14, 2004. Filed with Secretary of State September 14, 2004.]

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

SECTION 1. Section 830.33 of the Penal Code is amended to read:

830.33. The following persons are peace officers whose authority extends to any place in the state for the purpose of performing their primary duty or when making an arrest pursuant to Section 836 as to any public offense with respect to which there is immediate danger to person or property, or of the escape of the perpetrator of that offense, or pursuant to Section 8597 or 8598 of the Government Code. Those peace officers may carry firearms only if authorized and under terms and conditions specified by their employing agency.

(a) A member of the San Francisco Bay Area Rapid Transit District Police Department appointed pursuant to Section 28767.5 of the Public Utilities Code, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the district or when performing necessary duties with respect to patrons, employees, and properties of the district.

(b) Harbor or port police regularly employed and paid in that capacity by a county, city, or district other than peace officers authorized under Section 830.1, if the primary duty of the peace officer is the enforcement of the law in or about the properties owned, operated, or administered by the harbor or port or when performing necessary duties with respect to patrons, employees, and properties of the harbor or port.

(c) Transit police officers or peace officers of a county, city, transit development board, or district, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(d) Any person regularly employed as an airport law enforcement officer by a city, county, or district operating the airport or by a joint powers agency, created pursuant to Article 1 (commencing with Section 6500) of Chapter 5 of Division 7 of Title 1 of the Government Code, operating the airport, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, and administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(e) (1) Any railroad police officer commissioned by the Governor pursuant to Section 8226 of the Public Utilities Code, if the primary duty of the peace officer is the enforcement of the law in or about properties owned, operated, or administered by the employing agency or when performing necessary duties with respect to patrons, employees, and properties of the employing agency.

(2) Notwithstanding any other provision of law, a railroad police officer who has met the current requirements of the Commission on Peace Officer Standards and Training necessary for exercising the

powers of a peace officer, and who has been commissioned by the Governor as described herein, and the officer's employing agency, may apply for access to information from the California Law Enforcement Telecommunications System (CLETS) through a local law enforcement agency that has been granted direct access to CLETS, provided that, in addition to other review standards and conditions of eligibility applied by the Department of Justice, the CLETS Advisory Committee and the Attorney General, before access is granted the following are satisfied:

(A) The employing agency shall enter into a Release of CLETS Information agreement as provided for in the CLETS policies, practices, and procedures, and the required background check on the peace officer and other pertinent personnel has been completed, together with all required training.

(B) The Release of CLETS Information agreement shall be in substantially the same form as prescribed by the CLETS policies, practices, and procedures for public agencies of law enforcement who subscribe to CLETS services, and shall be subject to the provisions of Chapter 2.5 (commencing with Section 15150) of Title 2 of Division 3 of the Government Code and the CLETS policies, practices, and procedures.

(C) (i) The employing agency shall expressly waive any objections to jurisdiction in the courts of the State of California for any liability arising from use, abuse, or misuse of CLETS access or services or the information derived therefrom, or with respect to any legal actions to enforce provisions of California law relating to CLETS access, services, or information under this subdivision, and provided that this liability shall be in addition to that imposed by Public Utilities Code Section 8226.

(ii) The employing agency shall further agree to utilize CLETS access, services, or information only for law enforcement activities by peace officers who have met the current requirements of the Commission on Peace Officer Standards and Training necessary for exercising the powers of a peace officer, and who have been commissioned as described herein who are operating within the State of California, where the activities are directly related to investigations or arrests arising from conduct occurring within the State of California.

(iii) The employing agency shall further agree to pay to the Department of Justice and the providing local law enforcement agency all costs related to the provision of access or services, including, but not limited to, any and all hardware, interface modules, and costs for telephonic communications, as well as administrative costs.

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